Public Utilities

FORTNIGHTLY

November 7, 1946

PUBLIC UTILITIES REPORTS, INC.
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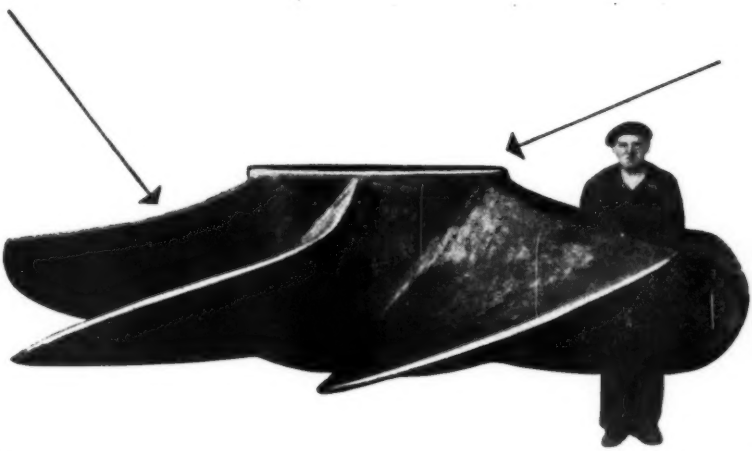

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Public Utilities Fortnightly

VOLUME XXXVIII *November 7, 1946* NUMBER 10

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Pages with the Editors

SHORTLY after this issue is distributed through the mail, the National Association of Railroad and Utilities Commissioners is scheduled to hold its fifty-eighth annual convention in Los Angeles, November 12th to 15th. It will be interesting to all concerned with problems of utility regulation to follow the deliberations of this most important meeting of the national regulatory group.

GLANCING back through various proceedings of the annual conventions of the NARUC, we were struck with the changing character of utility regulation through the years. Some things which occupied the attention of the state commissions during World War I no longer are problems—others are even more complicated.

DURING the inflation period which followed World War I, similar in many respects to the period through which we are now passing, rate cases occupied much of the attention of the commissions. It may be that we will see a repetition of this phase of regulation if the current atmosphere of inflation continues much longer.

IT is noteworthy that important rate increase petitions have been filed involving both the Bell and independent branches of the telephone industry for the first time since the beginning of World War II. There are some observers who think that the long downward trend in utility rates may be at an end, and that some increases will be applied for. If this trend should materialize, rate cases, now comparatively few in number, should occupy much more of the attention of state commissions in the months ahead. The recent gas rate increases by Public Service Electric & Gas Company of New Jersey are more straws in the wind.

* * * *

CONSOLIDATION, merger, and sale of utility properties, which gave rise to so many cases during the twenties when the large holding company combinations were forming, are now going somewhat into reverse as a result of "integration" orders of the Securities and Exchange Commission under the Holding Company Act. Motor carrier regulation, one of the most complicated and prickly problems of the state boards during the twenties and thirties, seems to have become fairly well crystallized, at least as to guiding principles.

INTRASTATE commercial transportation by air, on the other hand, is one of the matters that is just beginning to challenge the attention of the state boards on a wide scale. If the postwar period should bring its expected substantial development in local and feeder air-line service, we shall be hearing much more of this type of regulatory inquiry.

SUMMING up, it does not seem, for all the statements during recent years, that the state regulatory commissions were being outmoded; that there has been any real diminution in the volume or importance of their work. Instead, the U. S. Supreme Court decision in the Hope Case has undoubtedly increased the dignity and authority of the regulatory boards. Every biennial legislative year seems to witness the enactment of more state laws expanding the scope of their authority and jurisdiction. State commissions today are busier than ever in their history, and there is no discernible prospect that any slackening will occur.

ONE of the new regulatory problems which the state commissions will have to consider in the future will be the increasing activity of nonprofit rural electric coöperatives, promoted and financed by the Rural Electrification Administration. So far, a majority of the states have seen fit to restrict commission jurisdiction over such activity, but such statutory exemption was in most states developed prior to REA's appearance and during a period when nonprofit coöperative operations in the public utility field were so local and limited as to be of little serious consequence.

THAT is not so today. The outlook is for bigger and better REA co-op activity which is bound to impinge, here and there, on points of ordinary utility regulation. Only a few days ago the public service commission of Wisconsin decided to disapprove of the application of one of these REA co-ops to buy up an hydroelectric system serving a substantial part of the entire state. We also have heard in recent months increasing clamor about the loss of tax revenues and alleged unfair competition resulting from tax exemption by coöperatives generally. It would not be surprising if a movement were launched, perhaps beginning with the legislative biennial year of 1947, to bring these coöperatives more within the same standards of regulation and taxation which apply to business-managed utilities.

ANOTHER angle of this question is the possibility that such REA co-ops, many of which are already paying off their loans to Federal REA ahead of schedule, may liquidate their obligations to the Federal government and become independent of Federal control, which now governs their operations to considerable extent. In that event, the need for some sort of state regulation might become more pressing.

IN this issue we have the result of a survey taken by the staff of this magazine as to the extent of commission jurisdiction over REA and non-REA co-ops as it exists today. The article by our managing editor, appearing on page 588, describes this situation.

ANOTHER recent development of special interest to the state commissions is the adoption of new rules and regulations of practice and procedure by all of the Federal regulatory commissions. The article by ARNOLD HAINES, beginning on page 593, describes just why these rules were adopted and what objectives the new Federal Administrative Procedure Act seeks to obtain.

* * * *

SOMETHING new under the sun for the transit industry seems to have developed in that grand old eastern seaboard city of Baltimore. With all due respect, it is our own impression that if a contest were held for downtown traffic jams during rush hours, Baltimore would come in pretty near first place. Its narrow and circuitous streets, bottle necked with converging street-car routes, make the rush hour something of a daily nightmare for transit passenger, motorist, and pedestrian.

THE Baltimore Transit Company decided to do something about it in the form of an inducement to motorists to park in areas fringing the downtown section and patronize the transit system for the rest of the trip. The result was "perimeter parking," which is the subject of the leading article in this issue. If perimeter parking is successful in Baltimore, it may well be taken up elsewhere.

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE retirement of an indebtedness occurring because of the compulsion of § 11 of the Holding Company Act is held by the Securities and Exchange Commission to be involuntary and, therefore, a redemption premium is not payable as such. (See page 97.)

THE next number of this magazine will be out November 21st.

The Editors

In This Issue

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

HORACE PRESTON LIVERSIDGE
President, Philadelphia Electric Company.

"We recognize the fact that we are in business to serve the public the way the public likes it."

COLE COOLIDGE
Assistant chemical director, E. I. du Pont de Nemours & Company.

"Research has provided millions of jobs in the past, and there is reason to believe it can do it again."

RALPH HENDERSHOT
Financial editor, New York World Telegram.

"Essentially, the fact remains that if the American public does not produce, it cannot consume."

JOSEPH KASELOW
Writing in the New York Herald Tribune.

". . . public works is a singularly appropriate category to cut when an anti-inflationary program is needed."

SEVELLON BROWN
Editor, Providence Journal-Bulletin.

"We know that every great human achievement, spiritual or material, is the result of the free, uninhibited collaboration of many minds."

HARVEY F. MCPHAIL
Director of power utilization, Bureau of Reclamation.

"Even with the most optimistic development of public power that can be foreseen, there will be a constantly expanding demand for both publicly and privately produced electrical power."

WILLIAM GREEN
President, American Federation of Labor.

"What we need is less government control in fixing wages. We want to be freemen who can sell their labor under their terms and not be compelled to work for wages fixed by the government. That is Communism."

DWIGHT D. EISENHOWER
U. S. Army Chief of Staff.

"If we are to lead a people in the free way of life and if we are to succeed in teaching them the free way of life, we must allow them to practice it and at the same time must practice it ourselves. We can do it in no other way."

CLAUDE R. WICKARD
Administrator, Rural Electrification Administration.

"REA—and the challenge that REA offered to the utility industry—is responsible for the fact that today, instead of only 10 per cent of the nation's farms having electricity, one-half of them have central station service."

PHILIP D. REED
Chairman of the board, General Electric Company.

"It is our job to explain and sell the rightness of private competitive enterprise both at home and abroad. If we don't, we shall be in very danger of losing it."

IRA MOSHER
Chairman of the board, National Association of Manufacturers.

"It is as much our responsibility to foresee and meet the economic needs of the American people as it is to keep business solvent and meet the weekly payroll."

W. J. EGAN
Yahr-Lange, Inc.

"Your employee needs a friend. He is torn here and there, buffeted about in this whirlpool of malrelationship between business, governmental, and labor leaders."

STUART CHASE
Economist and writer.

"The war demonstrated that this collective output [war production] could be organized without using the Socialist formula, public ownership of the means of production."

REESE HALE TAYLOR
President, Union Oil Company of California.

"As a nation it is for us to determine whether we shall return to a proved system of free economy, or surrender our inherent rights and privileges to government bureaucracy."

RAYMOND MOLEY
Writing in The (Washington, D. C.) Evening Star.

"If opponents of the economic minds who still dominate the administration fail to take advantage of present revelations of the fallacy of New Deal economics, the future is without hope."

ALFRED P. SLOAN
Chairman of the board, General Motors Company.

"We attempt to solve strictly economic problems on the national level, upon the basis of a political formula, and naturally it does not work. Then some wonder why we are in such a mess."

W. RANDOLPH BURGESS
Vice chairman of the board, National City Bank of New York.

". . . the most important medicine for our inflation disease right here is to give enterprise a chance to produce without being impeded by labor strife, mistakes in price controls, and other handicaps."

MALCOLM P. FERGUSON
President, Bendix Aviation Corporation.

"The strength of the United States is in its mass production, but, if it does not operate smoothly and continuously, mass production becomes a white elephant of huge expense rather than profit."

EDITORIAL STATEMENT
The Wall Street Journal.

"The greatest danger to the system of capitalism is not from direct attack. The real danger is from those persons, either adroit or well meaning, who propose to accomplish through debauchery of taxation ends which the people would immediately reject if they could see them for what they were."

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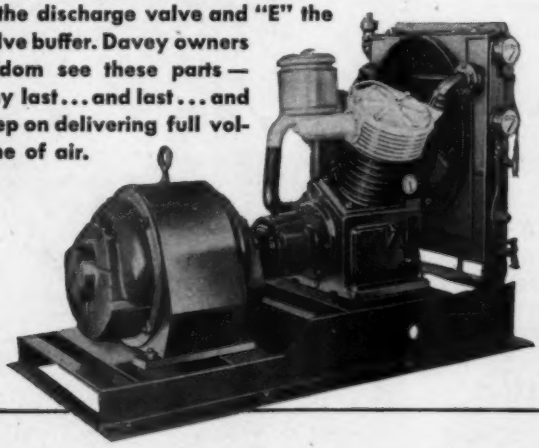

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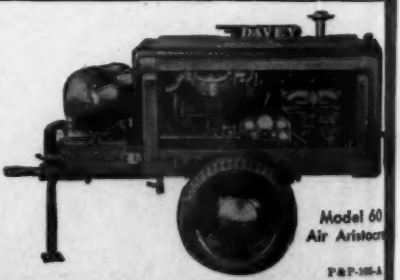

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Utilities Almanack

November

7	Tʰ	¶ *National Farm Electrification Conference will begin, Chicago, Ill., 1946.* ¶ *Virginia Independent Telephone Association will end meeting, Richmond, Va., 1946.*
8	F	¶ *Mid-Southeastern Gas Association will hold eighth annual meeting, Raleigh, N. C., Nov. 21, 22, 1946.*
9	Sᵃ	¶ *American Water Works Association, New Jersey Section, ends meeting, Atlantic City, N. J., 1946.*
10	S	¶ *Georgia Telephone Association will hold meeting, Atlanta, Ga., Nov. 21, 22, 1946.*
11	M	¶ *National Association of Electric Companies, Public Relations Clinic, begins, Chicago, Ill., 1946.*
12	Tᵘ	¶ *National Association of Railroad and Utilities Commissioners convention begins, Los Angeles, Cal., 1946.*
13	W	¶ *Independent Natural Gas Association of America will hold meeting, Fort Worth, Tex., Nov. 22, 1946.*
14	Tʰ	¶ *National Association of Electric Companies, Public Relations Clinic, begins, Salt Lake City, Utah, 1946.*
15	F	¶ *American Water Works Association, Virginia Section, ends meeting, Richmond, Va., 1946.*
16	Sᵃ	¶ *New Jersey Utilities Association will hold meeting, Absecon, N. J., Nov. 22, 23, 1946.*
17	S	¶ *American Water Works Association, Wisconsin Section, ends meeting, Green Bay, Wis., 1946.*
18	M	¶ *National Association of Electric Companies, Public Relations Clinic, begins, San Francisco, Cal., 1946.*
19	Tᵘ	¶ *Missouri Telephone Association ends meeting, Jefferson City, Mo., 1946.*
20	W	¶ *American Water Works Association, North Carolina Section, ends meeting, Albemarle, N. C., 1946.*

Courtesy of the New School *Elsie Hafner, N. Y.*

"The Changing West"

By Thomas Hart Benton

Public Utilities
FORTNIGHTLY

VOL. XXXVIII, No. 10 NOVEMBER 7, 1946

Perimeter Parking for Cities

An experiment under way in Baltimore, Maryland, which may be a happy and comparatively inexpensive solution of the typical American urban downtown congested automobile-traffic problem.

BY LARSTON D. FARRAR*

ONE of the principal problems facing every large American city today is that of traffic congestion, particularly at peak rush-hour periods, in the downtown district. From Alameda, California, to Augusta, Maine, and from Tampa, Florida, to Tacoma, Washington, city officials are facing the fact that every time a new car is sold, a new traffic tangle is in prospect.

Besides the actual political leaders, numerous other persons in large American cities are highly interested in parking problems and traffic troubles. These include the leading downtown merchants, the thousands of workers who use their cars for transportation to and from their jobs, and, last but not least, transit company officials.

The transit officials in a surprising number of instances are leading the way toward finding practicable, efficient, but not too costly solutions to the typical American city's traffic problems. All over the nation, the transit officials are realizing that they can render a new public service *and* open up a new source of revenue by actively studying traffic congestion problems and working with all interested groups on ideas and plans to solve these problems.

*Professional writer of business articles, Washington, D. C.

An example of how one transit company in one large American city is attacking the problem of downtown congestion and is pointing the way for other transit officials in hundreds of other cities can be seen in Baltimore, Maryland, where the Baltimore Transit Company recently began an experiment with what head-line writers have termed "perimeter parking."

Basically, the idea of perimeter parking is as obvious as a snaggle-tooth on a smiling country boy, but actually it has been tried in only a few notable instances in America and is still at the stage at which more conservative-minded officials ask if it is worth the effort, time, and money. A study of Baltimore's experiment in "perimeter parking" would indicate that the idea not only is sound from the standpoint of public relations but from the standpoint of profits.

HERE'S how the Baltimore Transit Company put its "perimeter parking" plan into effect—on a small scale. Back in February, 1946, Fred A. Nolan, the energetic president of the transit company, wrote a letter to the mayor, calling the attention of His Honor to the rather pertinent point that traffic congestion in Baltimore was becoming worse by the day. In this letter, Mr. Nolan told His Honor that the Baltimore Transit Company stood ready and willing, if given coöperation by the city and the property regulatory authorities, to rent, or lease, a parking lot on the outskirts of the downtown district on which a limited number of motorists could park their cars. The motorist would have the privilege of paying 25 cents to the transit company, after which he would receive two bus tickets on a contemplated new downtown bus route. The tickets could be used in going to office, shops, or stores and returning to the parking lot.

Under the plan, if the motorist wanted to use the new line at other times during the day, he would have to pay an additional 5-cent fare every time he boarded the bus. It was emphasized both then and in later publicity that the persons who utilized the proposed parking lot were to be, or ought to be, persons who normally would park their cars for the entire day in the downtown district—whether on the streets or in private parking lots.

THE mayor thought that the idea was sound. Merchants welcomed the idea. Business interests generally were favorably inclined to support it. The transit company decided on a lot that would accommodate 208 automobiles and, after getting the coöperation of the citizens of the area (which was zoned for residential use only), was able to lease the lot for one year. The company was able to get that particular lot only by promising residents, who otherwise would protest, that the experiment would be carried on at that place only for one year and that, if the experiment succeeded, arrangements would be made to obtain other property elsewhere.

From that point on, Mr. Nolan worked closely with Raymond S. Tompkins, his director of public relations, and Adrian Hughes, his operating manager, to be sure that the publicity surrounding the project did not make unnecessary enemies for the program. For example, he knew from past experience that some parking lot owners might object if the stress were

put on the fact that shoppers could use the transit company's convenient parking plan. And, of course, the public had to be informed of the new, convenient downtown bus route which thousands of persons would find useful whether they used the parking lot or not.

After a great deal of publicity spade work and promotional planning, the "perimeter parking" idea was inaugurated on August 26, 1946, with appropriate ceremonies at the parking lot itself. Great pains were taken to see that representatives of the city's official family, leading civic club leaders, and other prominent persons were on hand to inaugurate the unique new service in Baltimore.

FOUR brand-new, 27-passenger busses were on hand at the opening ceremonies and were quickly filled with Baltimore citizens anxious to ride on the "inaugural tour." That first day was a harbinger of success for the new, 2.7-mile line, for since that time the number of persons riding the new busses serving the route has increased with each passing day. The route begins on one of the principal Baltimore thoroughfares. In downtown Baltimore, the busses serve the financial and merchandising district and swing by the city hall and government buildings. During peak rush periods, a bus leaves the parking lot every five minutes, but, beginning at 10 AM, service is every seven and a half minutes. The parking lot opens promptly at 7:30 AM in the morning and closes at 6:30 PM. The total route is covered by the drivers in twenty-four minutes flat.

Mr. Nolan, who became president of the Baltimore Transit Company on July 1, 1945, after having been head of the Detroit (Michigan) Department of Street Railways, originated the idea of perimeter parking in the motor capital back in 1940. He ran into difficulties with parking lot owners there, due to the fact that the transit system in Detroit is municipally owned and is ultra sensitive to political pressure. Baltimore Transit officials point out that either publicly owned or privately owned transportation systems *can* use "perimeter parking," but that in this managerial problem, as in most others, private management has a greater flexibility of movement and is less apt to be hamstrung by political pressure groups.

COMMENTING on "perimeter parking," Mr. Nolan had this to say:

"In all the large cities that I have been in, there are two major problems —traffic congestion and shortage of

¶ *" . . . when most Americans think of 'solving' the congestion problems posed by an increasing number of cars in the same amount of downtown space, they think of only three possible methods:*

1. *Construction of new parking lots, or parking buildings.*
2. *Widening of the streets to permit more on-the-street parking.*
3. *Construction of auxiliary parking lots next door to every newly constructed office building or store."*

parking space in the downtown areas. In most of these cities, elaborate plans are being drawn for the furnishing of additional parking facilities in the heart of these congested areas, and, in my opinion, such procedure is the height of folly. If these projects are carried out, it is true that there will be capacity for more automobiles in the congested areas but the difficulty of getting to them will be increased at least in proportion.

"In all the cities with which I am familiar, the widening of streets to give the additional accessibility necessary to carry rush-hour traffic effectively is impractical. To me, this method of meeting the dual problem of traffic congestion and parking space availability is about as sensible as building a 2-lane bridge across an ocean span.

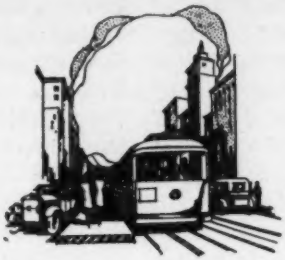
"It seems to me that the only way to remedy one problem without complicating the other is to reduce the number of vehicles entering these congested areas, and the only way that I see to do that is to furnish fringe parking lots with auxiliary bus lines. I have no more desire now to go into the parking lot business than I had when I was in Detroit, but, when I see running time through the congested areas being increased 25 per cent, as it is here in Baltimore, I am sure that we have to do something about it.

"I DO not know that our venture here will be successful. It was in Detroit, and I firmly believe that, had we been permitted to carry our program through to conclusion, the merits of the plan would have been proved.

"Some of the skeptics are people who can't understand what possible advantage a parking operation of this nature can be to a transit company. The answer as I see it is that if it is successful it will materially reduce the number of automobiles coming into the congested downtown sections, promoting faster traffic movement; and this means faster trips for transit vehicles, which ought to mean substantial reduction in operating cost if the job is done properly. If you can cover a route faster, you can make more trips with fewer vehicles, and you not only cut costs but attract riders with your greater speed and frequency. In Baltimore, we have avoided from the start giving the public any idea that this was a 'contribution,' inspired by nothing but the noble purpose of helping to solve the traffic problem. With us it is simply a matter of dollars and cents and the people know it.

"As a matter of fact, the idea secured immediate support in Baltimore. I don't mean to say people here have been shaken loose from the notion that parking lots in the heart of the congested areas is a good thing because we still have them here and possibly will have more. But the newspapers and the public generally think the 'perimeter parking lot plan,' as they are calling it, is a good idea, and are anxious to see it tried. You will understand the nature of this public support when I tell you that the lot on which we wanted to inaugurate the plan is a city-owned lot in a section of the city which was zoned for residential purposes.

"SUPPORTING this zoning classification was a powerful neighborhood improvement association led by dwellers on the fringe of the congested district who fight with determination all attempts at further commercial de-



Transit Cars *vs.* Automobiles and Trucks

"STUDIES by the Baltimore Transit Company proved that their transit cars, which occupy approximately 6 per cent of the space in the congested downtown district, carry 75 per cent of the persons riding through that area. On the other hand, privately operated automobiles and trucks, occupying 94 per cent of the space available, carry only 25 per cent of the persons moving about."

velopment upon their neighborhood. We had little trouble securing support from associations of merchants and businessmen for this project, but the notable fact is that we also got the support of this neighborhood group. . . .

"So far as capacity for parking automobiles is concerned, this one lot will be a drop in the bucket, but our hope is that it will prove so popular that we will be able to move onward from there and prove in Baltimore that 'perimeter parking' can really reduce traffic and popularize transit."

As Mr. Nolan pointed out, when most Americans think of "solving" the congestion problems posed by an increasing number of cars in the same amount of downtown space, they think of only three possible methods:

1. Construction of new parking lots, or parking buildings.
2. Widening of the streets to permit more on-the-street parking.
3. Construction of auxiliary parking lots next door to every newly constructed office building or store.

All three of these "remedies" for parking troubles are quite expensive. The people who want them carried out frequently are the same people who object to paying the higher taxes, or higher prices, which would be required to cure the traffic patient.

STUDIES by the Baltimore Transit Company proved that their transit cars, which occupy approximately 6 per cent of the space in the congested downtown district, carry 75 per cent of the persons riding through that area. On the other hand, privately operated automobiles and trucks, occupying 94 per cent of the space available, carry only 25 per cent of the persons moving about. In other words, the number of automobiles that pass a given point in downtown Baltimore during a

typical rush hour will carry only 1,500 persons in that hour. Transit cars in the same period carry 13,000 persons.

"Our problem, in short, is that of moving people—not vehicles," Mr. Tompkins pointed out. "And 'perimeter parking' is designed to solve that problem without adding more traffic problems in the city.

"Every time a man parks his car on our new lot, the amount of space available for other cars in downtown Baltimore is increased correspondingly. We are emphasizing that motorists can actually save money by parking their cars on the fringe of the shopping and financial district and doing business by bus.

"They save more than money. They save time. They save wear and tear on their nerves. They save the appearances of their automobiles because they dodge the fender-denting episodes that give proud car owners the fever.

"I feel keenly that the future of modern transportation today depends on the ability of transit companies to so package their service as to make it attractive to motorists—for motorists are increasing with every passing week. We must not concede that merely because a man owns a car, he will no longer think of riding busses or streetcars and that his problems are no longer the problems of transit company management."

MR. HUGHES pointed out that he has been grinning a little broader every time he has seen more operating figures on the new shuttle-bus line. Operating profit on the line now stands at 24.4 cents per mile driven, he said, after correct bookkeeping on all the money taken in so as to pay for the operation of the parking lot and amortization of its original cost.

One angle to operation of the line through the downtown business district was not exploited fully until the line actually was operating. That was the number of persons already in the downtown district who might pay a nickel to get to another part of the same district. Thousands of dodgers were printed and distributed in downtown office buildings and stores to inform the public of the new line and to point out that they did not have to park a car in the company's new lot to ride the new bus line.

Immediately, the load factor began to rise, and it became apparent to the transit company officials that such a short-line service was long overdue. City hall stenographers who wanted to get to a department store eight blocks away were happy to pay a nickel for the quick service, rather than having to walk as before. Likewise, businessmen and persons in all walks of life who work or shop in Baltimore are taking advantage of the new line. It has served to integrate the company's service in the most thickly populated day-time area of Baltimore.

ESSENTIALLY, transit officials of other cities are learning these lessons from observation and study of Baltimore's exploration and experimentation with "perimeter parking":

First, the public has to be convinced that the company is working in the interest of the motorist, as well as for more profits.

Second, support of leaders in all groups has to be obtained for the idea.

Third, emphasis constantly must be placed on the fact that the company

actually is helping to solve the parking problem and is not trying to compete with existing parking lots, or companies, which cater for the most part to short-time parkers.

Fourth, persons who might want to take advantage of the new service have to be informed of its existence and convinced that it is economical for them to use.

It's not hard to foresee the day when hundreds of American cities, at the urging of transit officials, will be practicing "perimeter parking" on a scale hitherto not dreamed. If so, Baltimore Transit Company will be able to receive kudos both from its own customers and from harried transit officials throughout the nation.

WITHIN two weeks of the time the Baltimore Transit Company inaugurated its "perimeter parking plan," the company had to post the "sold out" sign at the small parking lot by 11 AM each day, proving rather quickly that the service was welcomed by a goodly section of the auto-riding public.

The matter of additional locations already is under discussion and the company has the backing in its search for space of the Baltimore community council on street traffic, recently organized by the Baltimore Association of Commerce, the board of consultants of this organization, consisting of representatives of the city administration, the city council, the commission on city plan; and the Baltimore police department has made the matter of increased "perimeter parking lots" a definite project.

"We have reason to expect also an intelligent approach to the question of parking requirements within the congested downtown area and that it may be balanced against street capacities," Mr. Hughes pointed out optimistically. "While there is, of course, still some talk about more parking downtown, there is at least some indication of thinking in terms of better parking facilities in the downtown section rather than more.

"We still have a long way to go to make the 'perimeter parking lot plan' a large enough operation to improve traffic and then to turn that improvement into savings in operating costs on our transit lines through increased speed and improved regularity."

"IT is an illusion to suppose that Mr. Stalin and his dictatorship have ever intended or ever will intend to abandon their ideas of world revolution. There is not an iota of evidence to that end. . . .

"So long as there exists in the world any system founded on a conception of individual rights and individual freedom, the police dictatorship of Russia cannot rest. It cannot let its system be compared with a system which is built on freedom, and so long as such a system endures, the comparison will be made. A man determined to keep a room in complete darkness cannot let a beam of light shine through the keyhole and no more can the Russian system allow the light of freedom to penetrate."

—EDITORIAL STATEMENT,
The Wall Street Journal.

Can the State Commissions Regulate REA Co-ops?

Looking forward to the time when a number of REA co-ops may liquidate their indebtedness to the government and become entirely independent in their operations, a survey was made, in the form of a questionnaire to state commissions, regarding regulatory jurisdiction on the subject. This article shows the results of this survey with some analysis of particular situations.

By FRANCIS X. WELCH*

THE basis for this article was a questionnaire sent to state regulatory commissions having general jurisdiction over electric utility service. In brief, the results show that a little more than two-thirds of the state commissions, which have such general jurisdiction, do not presently regulate REA co-ops in whole or in part. But more than half of them would regulate REA co-ops if such co-ops began to serve nonmembers or openly solicit new business in such a way as to approximate regular public service in such areas.

Specifically, commissions in 41 out of the 48 states have power to regulate electric utilities. Out of this 41, 26 cannot regulate REA co-ops while 15 may. With reference to regulating co-ops serving nonmembers or openly soliciting public business, 24 of the 41 state commissions would regulate such operations and 17 would not. The situation, with respect to each individual state commission, is included in the alphabetical state list appearing on page 590.

A further question covered by the survey dealt with whether the state commissions would make any distinction between REA co-ops and any other kind of a co-op. In only one state (Indiana) was such distinction made.

THE text of the questionnaire sent to the state commissions embraced the following three questions:

1. Are REA co-ops, serving only their own members, subject to commission regulation as utilities in your jurisdiction?
2. Would such jurisdiction attach, where such co-ops began serving nonmembers or openly soliciting public membership?
3. Would the situation (1 and 2 above) be any different in the case of non-REA co-ops? (Meaning electric co-ops which are not REA borrowers, or which have paid up their REA loans, or which are furnishing utility type of service other than electricity.)

Not all of the state commissions were

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able to respond to the inquiry, although there were comparatively few which did not. In such cases, the writer endeavored to supply the answers to the questions by examination of state law. Where this occurred, a reference is noted to that effect on the state alphabetical list.

In addition to categorical answers to the three questions noted above, further comment was invited. A number of state commission spokesmen took advantage of this opportunity and some of the comments indicated considerable interest in the subject of possible state commission regulation of REA co-ops as well as non-REA co-ops.

Most of the REA co-ops' exemption is a result of an expressed statutory provision, as in the case just noted. Most of these statutory exemptions were enacted during the years subsequent to REA activity.

In the case of California, the railroad commission determined that it had jurisdiction over REA co-ops operating utility properties in that state in *Re* Public Utilities California Corporation, 56 PUR(NS) 311, even though the co-op professed not to serve nonmembers and to operate without profit.

With reference to the Georgia commission, an unofficial opinion was expressed that that board would have jurisdiction over any independent coöperative furnishing utility service where the coöperative was an agency of neither the Federal nor state government. However, the fact that the organization might be operating without profit or otherwise was not believed to have any bearing on the jurisdiction.

In Illinois, a statute specifically exempts from commission regulation "mutual telephone" organizations. But this statute does not make specific provision with respect to mutual organizations in other utility fields. As a result, doubt was expressed as to whether such jurisdiction existed without further authoritative study and determination.

In Indiana, the commission has jurisdiction over the rates and services of all co-ops operating under the so-called Rural Electric Membership Corporation Act. Since this act forbids co-ops to serve other than its own members, the commission presumably may exercise authority to curtail such operations exceeding the co-ops' powers. REA co-ops in Indiana generally are organized under the Rural Electric Membership Corporation Act. An interesting variation of usual practice appears to light in the fact, however, that co-ops not organized under the Rural Electric Membership Corporation Act do not appear to be subject to commission regulation. Thus it would seem that the Indiana commission can regulate REA co-ops but not other co-ops.

The Kansas reply stressed the fact that all coöperatives are regulated by the commission to exactly the same extent and in the same manner as are business-managed utilities. In Maine the co-ops must receive permission from the state commission to render service in a locality where a utility is authorized to serve. After that the commission has nothing further to do with the co-ops.

The reply from the Maryland commission pointed out that the commission might hereafter rule in accordance with what it found to be the law in a particular case.

In Massachusetts there are no REA

State Utility Commission Control Over Coöperatives

State	Can Regulate REA Co-ops	Can Regulate REA Co-ops Serving Nonmembers	Can Regulate Non-REA Co-ops
Alabama	No	No	No
Arizona	Yes[6]	Yes[6]	Yes[6]
Arkansas	Yes[1]	Yes[1]	Yes[1]
California	Yes	Yes	Yes
Colorado	No[6]	Yes[6]	No[6]
Connecticut	No[2]	No[2]	No[2]
Delaware	No commission jurisdiction over electric utilities generally.		
Florida	No commission jurisdiction over electric utilities generally.		
Georgia	No	No	Yes[2]
Idaho	No	No	No
Illinois	No[2]	No[2]	No[2]
Indiana	Yes	Yes	No
Iowa	No commission jurisdiction over electric utilities generally.		
Kansas	Yes	Yes	No
Kentucky	No[6]	No[6]	No[6]
Louisiana	No[6]	No[6]	No[6]
Maine	Yes[1]	Yes[1]	Yes[1]
Maryland	Yes	Yes	Yes
Massachusetts	Yes[2]	Yes[2]	Yes[2]
Michigan	Yes[6]	Yes[6]	Yes[6]
Minnesota	No commission jurisdiction over electric utilities generally.		
Mississippi	No commission jurisdiction over electric utilities generally.		
Missouri	No	Yes	No[4]
Montana	No	No	No
Nebraska	No commission jurisdiction over electric utilities generally.		
Nevada	No	Yes[2]	No
New Hampshire	No	Yes	No
New Jersey	Yes	Yes	Yes
New Mexico	No	No[5]	No
New York	No	No	No
North Carolina	No	No	No
North Dakota	Yes[1]	Yes[1]	Yes[1]
Ohio	No[6]	No[6]	No[6]
Oklahoma	No	Yes	No
Oregon	No	No	No
Pennsylvania	No	Yes[2]	No
Rhode Island	Yes[2]	Yes[2]	Yes[2]
South Carolina	No	No	No
South Dakota	No	No	No
Tennessee	No[6]	No[6]	No[6]
Texas	No commission jurisdiction over electric utilities generally.		
Utah	No	Yes	No
Vermont	No	No	No
Virginia	Yes	Yes	Yes
Washington	No	Yes	No
West Virginia	Yes	Yes	Yes
Wisconsin	No	Yes	No
Wyoming	Yes	Yes	Yes

[1] Regulation limited to certification or standards of construction.
[2] No REA co-ops within state.
[3] Some doubt; question has not been decided.
[4] By court decisions—operation in towns over 1,500 population regulated.
[5] By statute—co-ops may serve up to 10 per cent nonmembers.
[6] Data not supplied by state commission.

coöperatives. The unofficial opinion was given, however, that any electric coöperative in Massachusetts would be considered by the regulatory commission in the same class and manner as a private utility unless it were under the auspices of a municipality.

An interesting situation appears in Missouri as the result of the Missouri Rural Electric Coöperative Act, passed in 1939. This provides for a corporation to render electric service in rural communities and towns of less than 1,500 population. The only jurisdiction the state commission has over such coöperatives is as to public safety and induction interference. However, before this act was passed, several companies were organized under the Agricultural Coöperative Act and started into the electric coöperative business, financed by funds furnished by REA. Some of these companies purchased existing utility properties, some of which were located in towns above 1,500 population.

The Missouri commission, in passing on such sales by the utilities, required the co-op to come under the jurisdiction of the commission the same as a utility company where it was operating in towns above 1,500 population. Following this situation, an ouster suit was commenced in the state supreme court against one of these companies organized under the Agricultural Coöperative Act and the supreme court ruled that for such a company to engage in the electric business was *ultra vires* its charter. The companies affected by this decision are now trying to rearrange their affairs so as to convert to a regular utility corporation or to get out of business in towns above 1,500 population and convert to a rural electric coöperative corporation.

In New Jersey the issue of whether an REA co-op is a public utility was decided by the board in Jersey Central Power & Light Company *v.* Tri-County Rural Electric Company, Inc. 38 PUR(NS) 48. In its decision the New Jersey commission stated:

> This board has considered the record and the comprehensive briefs filed by the parties. On such consideration this board has reached the conclusion that the Tri-County Company is a "public utility" under the jurisdiction of this board and that the board has jurisdiction to entertain and act upon the petition herein and the issues raised thereby.

In New Mexico rural electric co-ops are specifically exempt from the jurisdiction of the commission as long as they provide service to no more than 10 per cent nonmembers. In North Dakota co-ops are subject to the jurisdiction only with respect to standards of construction and the coördination of electric supply lines with existing utility facilities. This holds true of non-REA co-ops as well as REA co-ops. The commission's reply points out that at least one North Dakota electric coöperative had organized under the statute without REA assistance and was treated the same as REA borrowers.

The Oklahoma reply ventured the unofficial opinion that if a coöperative should begin soliciting nonmembers and serving of the public generally, the jurisdiction of the commission would be the same and as extensive as now exercised over business-managed utility companies. Otherwise, REA co-ops, as well as non-REA co-ops, are exempt from commission jurisdiction.

In Pennsylvania the term "public

utility" under the state law expressly exempts coöperative operations from commission regulation. But neither the commission nor the courts have yet had occasion to pass upon the question of whether this exemption would obtain where a co-op began to serve nonmembers or the public generally.

In Rhode Island there are no REA coöperatives, but, if there were, they would be regulated.

In Utah the state supreme court has ruled that a nonprofit electric coöperative was exempt from commission regulation as long as it does not serve nonmembers or the public generally. The court further stated that if a coöperative at some future time began an investment business venture and sold back to nonmembers, that would be time enough for the commission to take jurisdiction and regulate its activities.

In West Virginia the commission decided to exercise jurisdiction over REA co-ops in a very comprehensive opinion rendered back in 1938. This was *Re* Harrison Rural Electrification Association, Inc. 24 PUR(NS) 7.

One executive of a state commission staff, who preferred to remain nameless, for obvious reasons, seriously doubted whether REA co-ops would ever get out of debt. He accused Washington influence of writing into the state law an exemption for REA co-ops which removes them completely from the control of the state board. He pointed out that the "indentures" which co-ops sign get them pretty well bound to Washington apron strings. "Each one of the co-ops is expected to sign a mortgage," writes this official, "but no absentee landlord ever made such a mortgage as the Rural Electrification Administration bureaucrats have devised." This official concluded:

> The Federal bureaucrats see to it that every co-op owes more money than it can ever pay. Under the indentures they require so much and so many things that we will be surprised if you or any of the generations down through your great, great-grandchildren will ever see the time that each and every one of the coöperatives is not controlled by the bureaucrats of the Federal government.

BE that as it may, REA continues to report that a large number of co-ops are paying back their loans faster than required. While the term of the REA loan is pretty long (thirty-five years), it is not unlikely that a number of co-ops will prefer to pay off their indebtedness ahead of that time and some have been paying on their loans already for a decade. Two REA co-ops have even paid off their loans and sold out to private utility companies. But whether REA co-ops sell out to business-managed utilities or simply pay off their Federal loans to continue more independent operations, the question of whether they should be regulated, and to what extent, will become a more important one for the state utility commissions with the passing years. Regulation of co-ops, as well as taxation of co-ops, is likely to be a live issue in the forthcoming biennial legislative year (1947) when 44 state legislatures are scheduled to meet in regular session.

¶ *"The hullabaloo about prices is intended to divest public attention from the real causes of inflation."*

—ERNEST T. WEIR,
Chairman, National Steel Corporation.

Why Did Federal Commissions Adopt New Rules?

During recent weeks Federal regulatory commissions, as well as other Federal agencies, have adopted a number of new rules and regulations concerning procedure. These changes were required by the recently enacted Administrative Procedure Act. This article explains the salient features of this act and the purposes sought to be accomplished by the changed rules of the various Federal commissions.

By ARNOLD HAINES*

DURING the month of September regular readers of the *Federal Register* noted an obvious burgeoning in size of that government publication. The reason for this temporary swelling was the routine requirement and practice for publishing new rules by Federal agencies in the *Federal Register*.

Why all the new rules came at the same time is another story. Although this story involves a rather dry legalistic subject, it is, nevertheless, quite important to public utilities, state utility commissioners, and others concerned with the functioning of the Federal regulatory commissions. In other words, the basic reason for these changes of rule has to do with the elimination of certain very real abuses which might unfairly affect the property and even the persons subject to Federal commission regulation.

The Administrative Procedure Act was the product of the 79th Congress. Its approval by President Truman on June 11, 1946, marked the end of a long struggle to make the so-called "administrative area" of our Federal government more democratic and more respectful of due process and other constitutional guaranties of the Bill of Rights.

Administrative law—so-called—is a relatively recent phase in the evolution of our Federal government. The setting up of expert boards to take care of specialized matters naturally entailed functions which, in strict principle, might be called a merger of the legislative, judicial, and executive.

THE need for release from ordinary rules of evidence, the fact that investigation and prosecution of statutory violations had to originate within the same tribunal which registered the original judgment on such violations,

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the need for expert judgment to be secure, at least as to findings of fact, from interference by the judiciary on appeal and review—all these innovations of so-called "administrative law" were foreign to the traditional, ideal concept of a government divided into three mutually independent branches.

As the work of the Federal regulatory commissions developed, members of the bar and of the bench—sensitive to any possible abuses of the rights and liberties of our citizens—began to criticize the latitude of such administrative action.

As early as 1933, the late U. S. Senator Norris of Nebraska introduced a bill to establish a United States Court of Administrative Justice, to have the exclusive province of appellate proceedings to correct abuses in administrative actions of Federal boards and commissions. No action was taken on this bill, but a series of bills followed in successive sessions of Congress. The American Bar Association was most active in pressing for such administrative reforms.

Generally speaking, the principal abuses sought to be corrected were as follows:

1. *The abuse of clandestine and arbitrary regulation.* Before the Administrative Procedure Act it was possible for various Federal boards and commissions to issue or adopt or change new rules without notice, or opportunity to object, by the individual, companies, or industries or other groups which might even be subject to punishment for the violation of such rules.

2. *Abuse of process and investigation by bureaus and commissions.* Under the old rules the commissions could engage in "fishing expeditions," requiring persons and companies to make appearance and disclose documents without any explanation of the specific purpose for such investigation.

3. *The abuse of the so-called "run around" or "brush off."* Under the old rules a Federal board did not have to set forth the powers, duties, and delegations of authority and responsibility for each of its divisions, branches, or major staff officials. As a result there was confusion as to which official was responsible for what, and where to go to get proper action on a given problem.

4. *The abuse of improper segregation of investigating and prosecuting officials from quasi judicial and opinion-writing officials.* One of the bitterest criticisms of Federal commissions has been this tendency to have the judge, jury, and prosecutor, so to speak, all tied up within the same organization.

5. *The abuse of arbitrary opinions and decisions not based on evidence.* Before the new act, Federal commissions were under no compulsion to have their decisions reflect even a consideration of the evidence brought forth at hearings at which members of the commission might not even be present.

THE new Administrative Procedure Act, which undertakes to correct these abuses, applies to all Federal agencies. This means any department, board, commission, authority, corporation, or other subdivision of the executive branch of the government which is empowered to determine the rights, immunities, and privileges of persons by the making of rules and decisions not reviewable except by the courts.

Before describing the various changes in the rules of practice by the different commissions, here is a summary of the Administrative Procedure Act, also known as the McCarran-Sumners Bill:

Section 1 contains the title of the act.

Section 2 contains definitions.

Section 3. *Public Information.* Agencies are required to publish descriptions of their organization, the general course and method by which they function, and their rules, opinions, and orders. Also, official records are to be made available to persons properly concerned, except information held confidential.

Section 4. *Rule Making.* No new rules may be issued and no changes in existing rules may be effected without the giving of adequate notice and right of interested persons to be heard.

Section 5. *Adjudication.* Where a hearing is required by statute, adequate notice must be given, hearings are to be held in accordance with §§ 7 and 8, and hearing officers, who are required to be free from supervision or direction of the investigating or prosecuting officers of the agency, are to make the recommended decision or initial decision. Agencies are authorized to issue declaratory orders.

Section 6. *Ancillary Matters.* This section gives parties the right of counsel, limits investigations by agencies to authority granted, and provides for the issuance of subpoenas.

Section 7. *Hearings.* Presiding officers at hearings are to be (1) the agency, or (2) one or more of its members, or (3) one or more examiners appointed as provided in the act. Presiding officers are to have authority to conduct the hearings, to rule on motions, etc.; irrelevant, immaterial, or unduly repetitious evidence is to be excluded and all orders must be issued upon the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence. The record of the hearing is to be the exclusive record for the decision.

Section 8. *Decisions.* Where examiners have presided at the hearing, the examiners shall initially decide the case or the agency shall require the entire record to be certified to it for initial decision. Whenever the examiners make the initial decision, such decision, in the absence of an appeal to the agency or review upon motion of the agency, becomes the decision of the agency. Whenever the agency makes the initial decision without having presided at the hearing, the hearing examiner shall first recommend a decision (with certain exceptions). Prior to any recommended or other decision the parties are entitled to submit proposed findings, exceptions, and supporting reasons for their conclusions.

Section 9. *Sanctions and Powers.* In the exercise of any power or authority no sanction shall be imposed or rule or order issued except within jurisdiction delegated to the agency and as authorized by law. License applications are required to be acted upon promptly and no revocation of any license shall be lawful except after notice and opportunity have been accorded the licensee to comply with all lawful requirements.

Section 10. *Judicial Review.* Except where statutes preclude judicial review or agency action is by law committed to agency discretion, the right of judicial review is granted to any person suffering legal wrong because of any agency action. In this section, Congress had laid down specific rules to be followed by the court in reviewing the decision of the agency. The re-

¶ "ADMINISTRATIVE *law—so-called—is a relatively recent phase in the evolution of our Federal government. The setting up of expert boards to take care of specialized matters naturally entailed functions which, in strict principle, might be called a merger of the legislative, judicial, and executive.*"

viewing court is required (a) to compel agency action unlawfully withheld or unreasonably delayed, and (b) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary or otherwise not in accordance with law; (2) contrary to constitutional right; (3) in excess of lawful authority; (4) without observance of procedure requirement by law; (5) unsupported by substantial evidence in cases subject to §§ 7 and 8; or (6) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court.

Section 11. *Examiners.* For proceedings pursuant to §§ 7 and 8, examiners are to be appointed by the agency subject to the civil service law. Examiners may not perform any duties inconsistent with their duties as examiners and are removable by the agency only for good cause determined by the Civil Service Commission after hearing.

Section 12. *Construction and Effect.* The act is not to be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Rules relating to evidence or procedure shall apply equally to agencies and persons. Subsequent legislation shall not be held to supersede or modify this act except to the extent that such legislation shall do so expressly. This section also contains the effective dates which have been previously stated.

So much for the requirements of the statute. From the standpoint of public utility interest, three Federal commissions had to make changes in their rules (as well as more than a hundred other Federal boards). These were the Federal Power Commission, the Federal Communications Commission, and the Securities and Exchange Commission. The three most noteworthy changes which were reflected in the new rules for all three of these commissions were:

1. Rules setting forth the exact delegation of authority and responsibility for each subdivision and staff official of the commissions.

2. Segregation of investigation and prosecuting functions from opinion-writing and decision-making functions.

3. The requirement of a sort of interlocutory judgment which was rather new to the Federal commissions, known as an "interim" or "proposed" opinion or decision, subject to further exceptions by the parties affected before it becomes final.

Federal Power Commission

The new FPC rules, effective as of September 11, 1946, superseded former rules of procedure adopted under both the Federal Power Act (June 1, 1938) and the Natural Gas Act (July 11, 1938). Section 01.1 describes the nature and authority of the commission, enumerating the different statutory duties imposed on the FPC under the Federal Power Act, Natural Gas Act, various flood-control acts, Bonneville Act, TVA Act, and other Federal project acts, as well as Executive Order No. 8202, concerning the exportation of power and natural gas. Following this there is a general description of the commission's functions under these statutes. There is also outlined in the new rules the duty, power, and function of each subdivision and official. The other principal features of the new FPC rules are summarized as follows:

1. In every proceeding in which the commission *has not presided* at the reception of evidence, provision is made for the preparation of an "intermediate" decision, to be prepared by the

Bill to Establish Court of Administrative Justice

"As early as 1933, the late U. S. Senator Norris of Nebraska introduced a bill to establish a United States Court of Administrative Justice, to have the exclusive province of appellate proceedings to correct abuses in administrative actions of Federal boards and commissions. No action was taken on this bill, but a series of bills followed in successive sessions of Congress. The American Bar Association was most active in pressing for such administrative reforms."

presiding officer and, under certain circumstances, by an officer of the commission or the commission itself. Such intermediate decisions are tentative and will become final within fifteen days provided no exceptions were filed thereagainst by any party. If exceptions are taken, the commission will issue its own final decision after reviewing the intermediate decision and the filed objections. Decisions by the commission in proceedings in which it *has* presided at the reception of evidence will be final. In rule-making or initial-licensing proceedings, the commission may omit the intermediate decision and render a final decision, at its discretion. The intermediate decision procedure may also be omitted if agreed to by all parties. (Rule 30.)

2. As mentioned above, any party may file an appeal from an intermediate decision within fifteen days after the service of a copy of an intermediate decision. (Rule 31.)

3. Provision is made for the filing by interested persons of petitions for the issuance, amendment, or repeal of a rule by the commission. (Rule 7.) With certain discretionary or prescribed exceptions, no rule may be adopted by the commission until it has published notice thereof in the *Federal Register* fifteen days prior to such proposed action. Interested persons may submit views or arguments concerning the proposed rule during this "waiting" period. (Rule 19.)

4. A presiding officer may withdraw from a proceeding when he deems himself disqualified, or may be ordered withdrawn if any allegations of disqualification are upheld by the commission. (Rule 20(d).)

5. The duties of a presiding officer at hearings are clearly delineated, as are the limitations on his consultative activities. (Rule 27.)

6. Except in certain specified types of proceedings, no investigative officer, employee, or agent of the commission may participate or advise as to the findings or decisions in the related proceeding other than as a witness or counsel in public proceedings. (Rule 30(f).)

7. Provision is made for "shortened procedures" that may be followed in

disposing of proceedings in which hearing is waived by all parties and which involve noncontested hearings. (Rule 32.)

IN addition to the foregoing general provisions, the new FPC rules relate to the following matters:

1. Provision is made for holding informal prehearing conferences for the purpose of entertaining offers of settlement or proposals of adjustment, and for expediting hearings. Results stipulated at such conferences may be received in evidence at the hearing, and will be binding. (Rule 18.)

2. Written testimony of "expert" witnesses at hearings must be made available to all parties at least five days prior to the date of submission thereof at the hearing. The number of expert witnesses that may be heard on any issue may be limited by the commission or the presiding officer. (Rules 20(h) and 20(i).)

3. Rule 37, titled "Coöperative Procedure with State Commissions," has been expanded in respect, among other things, of the procedure to be followed at a "concurrent hearing" at which the commission and a state commission sit together to make a record upon a matter over which all of the participating commissions have jurisdiction and responsibility for action. Provision is also made for procedure to be followed in the event of disagreement over rulings at concurrent hearings. A new rule also states that coöperation between two or more commissions in a concurrent hearing shall preclude either from taking the position of an advocate or a litigant in that proceeding.

Securities and Exchange Commission

IN the announcement of its revised rules, the Securities and Exchange Commission states that the more important changes relate to procedures to be followed in connection with the matters appearing below:

Rule III. *Notice of Hearing and Issues and Specifications of Procedures.* The revised rules in connection with hearings and issues extend the amount of information required to be set forth in the notices. In addition, new material added includes the provision that the moving parties shall in the notice of hearing, if practicable, or if not, as early as practicable in the course of the hearing, specify the procedure considered necessary in the proceeding, with particular reference to (1) whether there should be a recommended decision by a hearing officer, (2) whether there should be a recommended decision by any other responsible officer of the commission, (3) whether the interested division of the commission staff may assist in the preparation of the commission's decision, and (4) whether there should be a 30-day waiting period between the issuance of the commission's order and the date it is to become effective. Provision is also made whereby the hearing officer may call a conference of the parties for the purpose of specifying and agreeing on the procedural steps to be followed or omitted in the proceeding and any proposal agreed upon by all the parties is to be read into the record.

Rule V. *Hearings for the Taking of Evidence.* Provision is made whereby a hearing officer may withdraw from a case when he deems himself disqualified. Procedure is also given as to the method whereby any party or person who has been granted leave to be heard may request the hearing officer to withdraw on the grounds of personal bias or other disqualification. If the hearing officer believes himself not disqualified and an exception to such ruling is taken, the hearing officer shall certify the question to the commission which may rule upon such matter without hearing or it may require testimony or argument on the issues raised.

In describing the duties of the hearing officer, the rule states that the hearing officer shall regulate the course of the hearing, receive relevant and ma-

terial evidence, rule upon offers of proof, and exclude all irrelevant, immaterial, or unduly repetitious evidence. Upon exception to a ruling of a hearing officer, he shall promptly certify the matter to the commission in any case where (1) all the parties request such reference, (2) his ruling, if reversed by the commission at a later stage of the proceeding, would unduly delay or prolong the proceedings or cause undue inconvenience to the parties, or (3) the commission so directs. Rule V also provides that an application or declaration filed by a party other than the commission in which the facts alleged have been duly verified under oath may state that the applicant offers it in evidence. If such offer is made, the application or declaration shall be received in evidence at the hearing as proof in support of the allegations therein without the necessity of the applicant appearing and introducing further evidence, unless a party or person having a bona fide interest in the proceeding gives notice of his objection to the admission of the application or of his intention to appear in opposition thereto.

Rule IX. *Intermediate Decisions.* This rule provides that in every proceeding in which the commission has not presided at the reception of the evidence, the entire record shall be certified to the commission for final decision. (Section 8(a) of the Administrative Procedure Act states that in cases in which the agency has not presided at the reception of evidence, the entire record is to be certified to the agency for initial decision.) Unless the requirement is waived by all the parties, the hearing officer must prepare a recommended decision in any proceeding in which the hearing officer's decision is required under the Procedure Act, and in any other proceeding in which the commission directs him to render such decision.

Paragraph (c) of Rule IX states that unless the commission directs otherwise, in any proceeding where a required intermediate decision may under the Procedure Act be in the form of a recommended decision prepared by any responsible officer of the commission, such recommended decision shall be prepared by the staff of the interested division unless the requirement of any intermediate decision is waived by all parties. (There is perhaps some question whether the provision permitting a recommended decision to be prepared by a division staff is in strict compliance with the Procedure Act.)

Paragraph (e) of Rule IX provides that intermediate decisions shall be filed with the secretary within ten days after service of a copy of the record in the case, unless some other period is prescribed by the commission.

Under Rule X, exceptions to an intermediate decision must be filed within five days after receipts of a copy of such decision. Exceptions are to be argued only at the final hearing on the merits before the commission. Under Rule XI, briefs in support of excep-

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¶ "THE *changes in the rules of the Federal Communications Commission were not so extensive as those of the Federal Power Commission, because the FCC had in fact been following the intermediate decision procedure for some time—prior even to the enactment of the Administrative Procedure Act. . . . Nevertheless, the FCC did publish a new set of rules and procedure following the Administrative Procedure Act, which formally carried out the requirements of that statute.*"

tions to an intermediate decision must be filed within fifteen days from the date of service on the party filing the brief of a copy of the intermediate decision.

Rule XIII. *Public Information and Confidential Treatment.* Contained in this rule, among other things, is the procedure to be followed in connection with requests for confidential treatment pursuant to the provisions of clause 30 of schedule A of the Securities Act of 1933 as amended, § 24(b) of the Securities Exchange Act of 1934 as amended, or § 22(b) of the Public Utility Holding Company Act of 1935. This rule also provides that information or documents obtained by the commission in the course of any examination or investigation shall, unless made a matter of public record, be deemed confidential.

Rule XVII. *Extensions of Time, Continuance, and Adjournments.* In this rule, any person may, after a proper showing, be given leave to be heard in any proceeding as to any matter affecting his interests. No person shall be admitted as a party to a proceeding unless the commission is satisfied that his participation as a party will be in the public interest, and that leave to be heard would be inadequate for the protection of his interests.

Rule XIX. *Rules of General Application.* This contains new matter in that it provides that any person desiring the issuance, amendment, or repeal of a rule may file a petition therefor with the secretary of the commission. Such petition shall include a statement setting forth the text of any proposed rule or amendment desired and stating the nature of his interest and his reasons for seeking the issuance, amendment, or repeal of the rule. The secretary is required to acknowledge receipt of the petition and refer it to the commission for such action as the commission deems appropriate.

Rule XIX also further provides that whenever the commission proposes to issue, amend, or repeal any rule or regulation, there shall be published in the *Federal Register* a notice of the proposed action affording interested persons the opportunity to be heard at a proceeding to be held thereon, except where the commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

Federal Communications Commission

THE changes in the rules of the Federal Communications Commission were not so extensive as those of the Federal Power Commission, because the FCC had in fact been following the intermediate decision procedure for some time—prior even to the enactment of the Administrative Procedure Act. In the case of the FCC, however, the intermediate decision was known as a "proposed opinion." Nevertheless, the FCC did publish a new set of rules and procedure following the Administrative Procedure Act, which formally carried out the requirements of that statute.

WHETHER the new rules adopted by the FPC, FCC, and SEC will carry out the objectives of the Administrative Procedure Act remains to be seen. Senator McCarran (Democrat, Nevada), chairman of the Senate Judiciary Committee and co-author of the act, described it as a "strongly marked, long sought, and widely heralded advance in democratic government."

But there probably will continue to be careful scrutiny by the bench and bar as to the operation of these administrative tribunals, to be sure that they do not gradually slip into the road towards absolute despotism. Thirty years ago a distinguished statesman, Elihu Root, put the problem in words which have

not been improved upon since. He then said:[1]

> There is one special field of law development which has manifestly become inevitable. We are entering upon the creation of a body of administrative law quite different in its machinery, its remedies, and its necessary safeguards from the old methods of regulation by specific statutes enforced by the courts. As any community passes from simple to complex conditions the only way in which government can deal with the increased burdens thrown upon it is by the delegation of power to be exercised in detail by subordinate agents, subject to the control of general directions prescribed by superior authority. The necessities of our situation have already led to an extensive employment of that method. The Interstate Commerce Commission, the state public service commission, the Federal Trade Commission, the powers of the Federal Reserve Board, the health departments of the states, and many other supervisory offices and agencies are familiar illustrations.
>
> Before these agencies the old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight. There will be no withdrawal from these experiments. We shall go on and we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrongdoing which, under our new social and industrial conditions, cannot be practically accomplished by the old and simple procedure of legislatures and courts as in the last generation. Yet the powers that are committed to these regulating agencies, and which they must have to do their work, carry with them great and dangerous opportunities of oppression and wrong. If we are to continue a government of limited powers these agencies of regulation must themselves be regulated. The limits of their power over the citizen must be fixed and determined. The rights of the citizen against them must be made plain. A system of administrative law must be developed, and that with us is still in its infancy, crude, and imperfect.

[1] Administrative Procedure Act, Legislative History, Senate Document No. 248, page 350, U. S. Government Printing Office, 1946.

Likewise, former Chief Justice of the U. S. Supreme Court, Charles Evans Hughes, said twenty years ago:[2]

> Legislators have little time to follow the trails of expert inquiry and so we turn the whole business over to a few with broad authority to make the actual rules which control our conduct. The exigency is inescapable but the guardians of liberty will ever be watchful lest they are rushed from legislative incapacity into official caprice. If we escape bureaucracy it will not be because of dissertations on delegations of legislative authority. We are a practical people and necessary delegations will not fail to find reasons to support them. It will be only because we never lose sight of the ultimate purpose of government, because we would rather take some risks than give too much leeway to officialism, because we refuse to establish or maintain power for its own sake, and because we have the assertiveness of the unbroken will of freemen who will insist that every public officer must constantly feel that he is a servant and not a master, the servant of an intelligent community which is content with thorough investigation and impartial findings and scientific applications, but is not servile and is able and quick to detect favoritism or arbitrariness. It will be for the reason that we are not willing to exchange our birthright for a mess of administrative pottage, no better for being prepared by democratic cooks.

As already indicated, the passage of the act marks the accomplishment but not necessarily the end of a long road towards procedural reform. Perhaps further steps may be necessary to insure complete protection against the abuses mentioned. But certainly the act itself represents a long step in the right direction, and that is why the Federal commissions adopted new rules.

[2] *Ibid*, page 350.

The Longest Los Angeles Shoestring to Date

A 1,200-mile pipe line to wasted natural gas from Texas and New Mexico. Latest bit of ingenuity by people who are building a world metropolis where Nature hardly provided for a good-sized town.

By JAMES H. COLLINS*

NOTHING startling in the news that Los Angeles, a city built on shoestrings, is now reaching out with the longest shoestring yet—a 1,200-mile tentacle to the Texas oil country, to bring in more fuel gas.

Like many other great cities, this town is located where Nature did not foresee that people would want to live, work, and trade—or didn't care.

Sixty years ago, the town-lot boosters began plugging the climate of the Los Angeles basin. People came. More and more came, until there were enough to show how scantily the region was supplied with first things. Nature had laid in plenty of climate, but from there on it was up to Man.

The local water supply was enough for a town, but no more. When a hundred thousand people had come, it was necessary to send out the first shoestring, the Owens river aqueduct, 233 miles of pipe, canal, and tunnel, to bring water down from the mountains.

When a million people had come, the second shoestring for water was pushed to the Colorado river, 246 miles, bringing in a greater supply—which today begins to fall short of future needs, as the population grows and industries burgeon.

Nature never dreamed that Man might want to trade at the ocean side of the Los Angeles basin or coastal plain. So she provided no safe harbor.

That called for another shoestring, for when the harbor had been protected by breakwaters, the city annexed a narrow strip of land down to it, 20 miles, making it a seaport with all the advantages in transportation rates.

Nature provided no coal and, after bringing it in for the first few years to

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make illuminating gas and heat homes, the resources of crude oil and natural gas were discovered. Through shoestring systems of pipe lines reaching the dry gas fields, and the oil fields that yield wet gas, the Los Angeles utility companies have reached out north to the point where they find San Francisco reaching out south for gas supplies.

Recently, when the big coal strike started, anxious editors canvassed the country to find out whether industries were being shut down.

"That question is funny out here," said the Los Angeles correspondents, "because our kids grow up hardly knowing what coal looks like. If steel runs short, then we will have shutdowns to report. But now, our industries are running right along on gas and fuel oil."

AND now this underprivileged city is reaching out through the longest shoestring yet, 1,200 miles, to bring natural gas from Texas and New Mexico. This project is one being carried out entirely by private enterprise. Water, the harbor, and a good deal of hydroelectricity were developed as municipal projects.

In June, the Federal Power Commission authorized the project and, at this writing, the first bids are about to be invited for construction. Approval of the California Railroad Commission had been obtained previously.

It is a joint enterprise with construction from Los Angeles to the California boundary line being done by the Southern California and Southern Counties Gas companies, and from Texas to the California line by the El Paso Natural Gas Company of El Paso. The total cost will be about $70,000,000, and it is planned to have gas flowing by the winter of 1947-48.

Big gas transmission projects often bring out a fighting opposition, but this one was unopposed to an extent that led the Federal Power Commission to comment on that point—it was backed by the California Railroad Commission, the city of Los Angeles, the Los Angeles Chamber of Commerce, and the city and county of San Francisco.

Nature didn't do right by the Los Angeles gas man during the ages when she was raising his territory out of the Pacific. His source of supply was located in the wrong places and got into other hands.

The Federal Power Commission looked kindly upon him because he appeared with facts to prove this.

THE Los Angeles gas companies own no gas wells, dry or wet, and have no production facilities for the stuff they sell, apart from some standby equipment to make fuel gas out of crude oil for emergency peaks.

Their main supply is wet gas from the oil industry which sells them what it doesn't want for its own purposes.

And the oil industry is finding more and more uses for a diminishing supply. If the gas companies want what is left, they can come and get it wherever and whenever it happens to be. Oil men are interested in oil which is in itself a very interesting business.

In 1945, for the Los Angeles gas companies, the oil industry had 177,700,000 thousand cubic feet. It is estimated that, by 1949, this consumption will drop to 99,400,000 thousand cubic feet.

Proposed natural gas pipe line, now before railroad commission, will extend 1,000 miles to Mid-Continent gas fields. Project, designed to safeguard southern California's future domestic fuel requirements, will bring natural gas to Los Angeles area, and give employment to 3,000 workers.

In the same year, the supply of dry gas was 6,100,000 thousand cubic feet. By 1949, it will be down to 5,000,000 thousand cubic feet. The dry "natural" gas resources of the state are small compared to oil gas—last year hardly 1 in 30.

During the war years, when California stepped up its oil production to unprecedented levels for military purposes, there was very little increase in the oil gas available for gas companies. The apple was bigger but eaten down to about the same core.

Petroleum experts do not expect future oil production in California ever to reach the war levels. Heavy overdrafts were made on the state's none too ample reserves.

It was partly this overdraft that made it necessary for the oil industry to use more of its gas, in major maintenance and repressuring projects, to increase future oil recoveries. This cut down the supplies available for gas companies. Such gas may not be available to them for from fifteen to twenty years.

LAST year, the Los Angeles gas companies had more than a million firm customers whose service could not be interrupted, and they burnt up 113,640,000 thousand cubic feet. Another 91,197,000 thousand cubic feet was supplied to customers whose service could be interrupted during peak loads, these being industrial plants that buy with that stipulation.

The meter load has been steadily rising for a good many years, and the number of meters grows fast with increases in population. Since 1930, the population of Los Angeles county, which is representative of other southern California counties, has nearly doubled—from 2,200,000 to an estimated 3,375,000 for 1945. In the same years the city grew from 1,238,000 to 1,825,000.

A little competition from fuel oil and electricity for cooking and heating is all these gas companies have to worry about. There is none from coal. The big worry is getting enough gas to supply the demand.

Looking ahead, projecting the curves, it is found that in 1947 there will be a deficiency in California gas of 122,000 thousand cubic feet that cannot be supplied to the firm customers at the peak, and a shortage of 277,000 for the interruptible customers.

By 1949, these peak-day deficiencies will have grown to 289,000 and 281,000 thousand cubic feet, or a total shortage of 570,000, from which time the shortage will get progressively worse, if California gas resources alone are to be relied upon.

This was the Los Angeles gas man's view, and experts from the California Railroad Commission, which is conservative, and generally relies on facts and engineering, gave it as their technical opinion that the gas people were too conservative—that they would need more gas than that to meet peak-day and annual deficiencies, and would need it sooner than they had estimated.

NOW, over in Texas, oil gas is being wasted to the air largely through lack of a market, as it was wasted to the air in California less than twenty years ago. As the market caught up with the California surplus, so now it is reaching out to utilize the Texas surplus.

The El Paso Natural Gas Company has made a 30-year contract with the

guard southern California's future domestic fuel requirements, will bring natural gas to Los Angeles area, and give employment to 3,000 workers.

Waste of Oil Gas

"... over in Texas, oil gas is being wasted to the air largely through lack of a market, as it was wasted to the air in California less than twenty years ago. As the market caught up with the California surplus, so now it is reaching out to utilize the Texas surplus."

two Los Angeles gas companies to supply 125,000 thousand cubic feet daily the first year; 175,000 thousand cubic feet daily the second to fourth years; 305,000 thousand cubic feet daily the fifth and succeeding years.

To meet this obligation, the El Paso Company has executed contracts as follows:

Phillips Petroleum Company, a 30-year supply of a possible daily maximum of 255,000 thousand cubic feet from the Permian Basin, Panhandle, and Hugoton fields.

Gulf Oil Corporation, a 20-year supply up to 30,000 thousand cubic feet daily from the Permian Basin.

Shell Oil Company, 20-year supply of 20,000 thousand cubic feet daily from the Permian Basin.

Warren Petroleum Corporation, 15-year supply of 10,000 thousand cubic feet daily from the Permian Basin.

The El Paso Company is also negotiating for more wasted oil gas in the Permian Basin along the route of the pipe line, and one fact that weighed heaviest with the Federal Power Commission was the conservation policy behind it. The El Paso people maintain that they will utilize Permian Basin oil gas now being wasted up to around 75 per cent of the contract maximum of 305,000 thousand cubic feet daily, and take the balance from the dry gas Panhandle and Hugoton fields.

However, the commission raised a question:

"California oil well gas, so plentiful yesterday that it was wasted, is now growing scarcer—what evidence have you that Texas oil gas will not run into this same difficulty in the next thirty years?"

Expert opinion answered that there was good evidence of reliable wet gas reserves in the Permian Basin in Texas and New Mexico, and dry gas in the Panhandle and Hugoton fields. The Phillips Petroleum Company will be able to supply 190,000 thousand cubic feet daily for thirty years from the west

part of the Panhandle and the south part of the Hugoton fields. Changes will come, but this new pipe line sets up a market for gas from newly discovered fields, and new discoveries in existing fields.

THE 1,202 miles of main pipe line starts with 251 miles of 24-inch pipe from Dumas, Texas, to Eunice, New Mexico, and 737 miles of 26-inch pipe from there to the California-Arizona state line near Blythe, California. This 988 miles of line is to be constructed by the El Paso Company, with compressor stations having an aggregate of 129,800 horsepower in the final stage; 5 connecting lateral lines in the Permian Basin in both Texas and New Mexico; 3 gas purification and dehydration plants; 1 gas dehydration plant. Total cost estimated at $53,800,000.

At Blythe, the southern California gas companies take over, building 214 miles of 30-inch pipe line to Santa Fe Springs, south of Los Angeles. This is the largest diameter gas pipe line authorized to the present time, designed for 52,000 thousand cubic feet daily of line-pack storage, in addition to the rated delivery capacity of 305,000 thousand cubic feet daily. There will be a number of lateral lines and appurtenant facilities, and a 10,000 horsepower compressor station near Blythe. The total cost to the southern California companies is estimated at $16,225,000.

The whole system is planned for three progressive stages of construction and operation, with gas deliveries by El Paso to the California border scheduled to start by June, 1947.

Financing by El Paso, by contracts presented at the hearing before the Federal Power Commission, includes $36,000,000 of 3 per cent 20-year first mortgage bonds, sold to 6 insurance companies; an agreement with the Chase National Bank for an $8,500,000 loan at 2 per cent; sale to underwriters of $7,500,000 preferred stock with 4 to 4½ per cent dividends; sale to present stockholders of $4,000,000 common stock at $40 per share. This provides $56,000,000 for refinancing costs and construction, with $2,000,000 for contingencies.

THE southern California gas companies expect to finance their part of the project from current funds, plus a $10,000,000 bank loan.

The average rates for gas delivered by El Paso will be 15 cents per thousand cubic feet during the first year, 14½ cents the next three years, and 14 cents in the fifth and succeeding years, under the 305,000 thousand cubic feet daily delivery stage. Present well-head prices for oil gas in California average 8.3 cents per thousand cubic feet. That is profitable. No gas is wasted.

Not only will the project utilize gas which would otherwise be wasted, but Los Angeles is the only market at present in sight. No other community to the east or north has expressed any desire to pipe in the Permian Basin supply, nor has any other pipe-line company shown interest.

By the time this contract ends, in 1977, the Los Angeles area could have 7,500,000 people, according to population boosters, who base their estimates on the present rate of growth.

Present population is estimated at 3,600,000. For the past thirty years there has been a steady increase of 90,-

000 yearly, due to "immigration" added to the birth rate. Sometime around 1960 there should be 5,000,000, and another 1,500,000 would be added in the following seventeen years, if the present rate of growth continues.

Could be—for projecting this curve backwards the area had 2,500,000 people thirty years ago.

Growth in industrial activity, which means increasing gas demands, has been even faster than increase of population.

For, in 1939, there were under 90,000 factory workers employed. During the war, this rose to around 490,000. Naturally, there has been a sharp decline as war work stopped. Still, there are about 210,000 factory people working today, and the town expects that there will be at least double the prewar average of 90,000 when postwar industry becomes normal.

USING household demand as the unit, southern California gas engineers figure that this additional supply will take care of at least 1,250,000 customers, or a population equivalent to the cities of Akron, Des Moines, Indianapolis, and San Antonio.

Before the end of the contract, the pipe-line system will have to be enlarged—unless by that time we may be using atomic energy.

At the present pace of scientific progress, that seems to be distinctly something on which gas engineers will have to reckon.

Los Angeles has already a shoestring reaching out in that direction, with "Cal-Tech" scientists active in atomic research.

Back in our school days, we used to read about the degraded "Digger Indians" of California who didn't know enough to build houses, but dug holes to live in, and lived principally on worms, dug from the ground—hence their nickname.

Even now, the school lessons have not caught up with the facts about California Indians, revealed in the excavations of men like David Banks Rogers in the Santa Barbara area.

One outstanding fact is the isolation of southern California.

THREE distinct Indian civilizations have been unearthed.

First, there were the Indians found when the white man came, known as the "Canaliño," who built huts, and good asphalt-waterproofed boats, and lived well on sea food and game—their kitchen middens furnished their day-by-day story. They made stone weapons as well as tools, but evidently had few enemies, because they were shut off from other tribes to the east and south.

¶ "DURING *the war years, when California stepped up its oil production to unprecedented levels for military purposes, there was very little increase in the oil gas available for gas companies. The apple was bigger but eaten down to about the same core. Petroleum experts do not expect future oil production in California ever to reach the war levels. Heavy overdrafts were made on the state's none too ample reserves.*"

Second, there are the "Hunting People," who appeared maybe 1,500 years ago, and also left kitchen middens. They lived largely on game and made excellent stone spears and arrows for beast and human enemies.

But it is likely that they had few enemies. Down the coast, from Alaska to Mexico, marched the successive waves of people from Asia who populated the Americas—or so is the present ethnological theory. But the happy hunting people were off the route, and apparently not molested by the aggressive tribes who had settled to the east and south.

The oldest civilization of all, which has left its dim record in relics encrusted with mineral seepages, has been named that of the "Oak Grove People." It dates back before Christ—perhaps many centuries. These "ancient ones," as they were called by modern Indians who transmitted native legends, had no stone weapons.

Their climate was very different from that of today. The land was rainy and had great forests of oak trees, and the people lived largely on acorns which they ground up in the stone *metates* left behind.

ALL the evidence points to a people who had no fear of enemies, and who may have been among the first arrivals on our continent. They left no pottery, and it is conjectured that they may have come from Asia before that industry was developed in their old home land. They did build huts, and had ample kitchens, shown in the fireplaces left behind, and were possibly as "civilized" as our own European ancestors of that day. They were better than the "Digger Indians" of the school books.

But they were isolated in the land that is now southern California, and if their numbers had grown to a hundred thousand they would have had to begin sending out shoestrings to the natural resources needed by whatever standard of living they attained.

Nature saved them that trouble.

For one morning—archeologically speaking—they all disappeared. Every village that has been excavated gives evidence that it was deserted at the same time.

An invading enemy? A plague? A catastrophe of some sort? A migration?

"We do not know," admit the archeologists, "but prehistory abounds in mysterious disappearances, lost people like the Cliff Dwellers, the Mound Builders, the sculptors of Easter island —now add the Oak Grove People of the Santa Barbara coast."

Wherever they went, they left evidence that the region of metropolitan Los Angeles, then as now, was set off by itself.

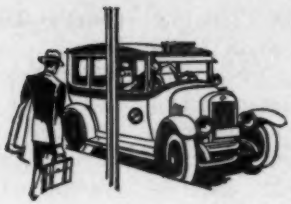
No place to build a great city—and therefore just the place Man would want to build one.

The city has come.

It must live, and grow, by reaching out for its everyday necessities. It may be destined to become the world's first city—its people believe that.

If they are right, they will have to be still more ingenious in sending out future shoestrings.

And, if longer ones are needed, count upon Los Angeles to plan them and build them.



Roger Takes a Cab

How taxi radio communication works and reduces dead mileage of company cars.

By DREW J. DAVID*

THE taxi driver threw down the flag then mumbled a few inaudible words. Perhaps they weren't inaudible. I was paying no attention, was interested only in reaching my destination. I was startled by a female voice. The soft contralto said only:

"Roger. Over."

"Cab 227. Broad and Columbia. Loaded. To Sixteenth and Market. Over," said the driver again.

He was the center of my attention now. I noticed a set of buttons and a small French-type telephone on the dashboard.

Radio was suggested. Something new? As yet unknown to the public, radio for transit companies, steps ahead. Another business falls in. Better service for the public? I must know more about this. The hack driver proved most coöperative.

"This cab, 227," he said, "is the company's experimental car. Since the latter part of June we have been using 2-way radio while the company works out technical 'bugs' and radio dispatching technique."

"Everyone is curious," he explained, "that is, everyone riding in *this* hack."

The big surprise is always when a female voice comes out of the dashboard in the best coming-in-on-the-beam manner: "Roger. Over."

The FM (Frequency Modulation) transmitter and receiver, working on 156 megacycles, are in the cab's baggage compartment. Twenty-two stories above the street, in a Philadelphia downtown penthouse, the central transmitter is located. In another building's third floor a dispatcher sits at the company's main switchboard.

There is nothing new about the equipment, which is identical to that used by the Philadelphia Transportation Company.[1] Philadelphia is the largest city in which it has been adopted by a taxicab company. The Yellow Cab Company is considering radio for its entire fleet of 1,290 cars, of which 40 are the supervisors.

*Professional writer of business articles, Philadelphia, Pennsylvania.

[1] "Radio for Transit Companies," PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXV, No. 6, page 358, March 15, 1945.

ROGER TAKES A CAB

THERE is one big advantage of radio-equipped cabs. Dead mileage is reduced from 35 per cent to 20 per cent or less. It is much faster than telephone dispatching also. Thus radio cabs mean more to the company than they do to the public—for the present, at least. Nevertheless, it is a step forward.

The driver of the experimental car is greatly pleased and as yet has not tired of explaining the equipment to curious passengers. He does, however, shy away from the use of "Roger."

When "Roger" comes in in a girl's voice everyone gets a big kick, especially ex-service men.

Most riders have almost the same reaction: They reason it should come in handy in case of a holdup, to which the cabman replies:

"I'm not so sure about that. I figure the other guy's got a gun and you've only got a telephone. As soon as they saw you use it, you'd be a dead pigeon."

Girls are being trained for the office dispatching board, and fifteen drivers are to be broken in. It takes but an hour for this training and they remember to push the "push-to-talk" button within three hours.

One of the radio girls considers it easy work. Formerly a traffic operator (handling company service and accident calls), she finds her new job a bit dull with only one cab to watch.

"I'd rather be busier. I think about 20 radio cabs would be enough for one girl to handle," she mentioned.

THESE girls keep track of the cabs by means of a tiny, magnetized miniature (cab) which clings to a cylindrical metal-backed map wherever it is spotted.

Should they lose track of a cab, they need only to go on the air from their sound-proofed cubicle:

"Two twenty-seven, W3XWV, Signal Five, over."

The driver comes back with:

"Two twenty-seven, Sixteenth and Market, loaded, over."

That is standard terminology for the company. Air wordage must be kept to a minimum. It was explained that this is because the FCC, for one thing, monitors the transmissions. Only an experimental license has been issued to the company so far.

When it is necessary to spell out the name or street, the Navy phonetic is followed by the girls. (Able, Baker, Charlie, Dog, Easy, and so on.) It is thought that the drivers too will adopt the lingo. At present they seem to have no desire to pass "Roger."

Not a bit of trouble has been experienced in picking up the "Roger-and-over." It just seems to come naturally.

"THE people get and keep the kind of men in public office that they want. When legislators discover that independence and courage and adherence to principles above expediency are rewarded by support at the polls, we are more likely to get that kind of representative. If the voters fail to support such men, they will be tempted to yield to the demands of the pressure groups, which are so organized as to bring votes to bear in a purge against them."

—EDITORIAL STATEMENT,
Springfield (Massachusetts) Union.

Government Utility Happenings

Interior Officials Talk "Power" at Reclamation Association Meeting

AMONG the principal speakers who addressed the members of the National Reclamation Association at their annual convention in Omaha, October 9th to 11th, were officials of the Interior Department and of the Bureau of Reclamation.

Secretary of Interior, J. A. Krug, unable to attend in person, expressed his regrets in a letter to Robert W. Sawyer, president of the association, in which he said he is giving his "full support to the reclamation program for the maximum development of western water and land resources." Hydroelectric power, Mr. Krug wrote, "is vital to aid irrigation financially and assure low-cost energy for western industrial development, domestic and rural purposes." Transmission lines, he added, are essential to carry power to load centers.

Warner W. Gardner, Assistant Secretary of Interior, addressing himself to the members of the convention with a talk entitled "Reclamation As a National Investment," said:

> Each year that passes brings to the United States a greater dependence upon the development of our western water resources. And as the reclamation program moves forward to meet this need, the policies which underlie that program and the manner of its execution become progressively more far-reaching and important.

The speaker then reviewed the activities of the Federal government in reclamation development, stating that it has invested about $325,000,000 in the irrigation facilities now in operation, and that more than $75,000,000 has been repaid by water users under the reclamation law.

FOLLOWING his remarks on the irrigation phase of reclamation, Mr. Gardner devoted several pages of his paper to "low-cost power." His comments illuminated the philosophy of this Federal agency on the hydroelectric power angle of these multipurpose river basin developments. He continued:

> There is another aspect of reclamation policy which has received much public attention; indeed, far more than it deserves. I believe, in fact, that this association has itself from time to time cast a suspicious eye upon the government's effort to bring in low-cost power along with water. Some of you, I understand, have at least in the past been tempted by the shortsighted and delusively simple proposition that high-cost power means lower-cost water. This is simply not the case, and only a lack of information can explain any fear that low-cost power is going to sidetrack irrigation. . . .
>
> Power is a friend not a foe of irrigation. Through power aid to irrigation, many projects are feasible which otherwise could not be authorized. Hydroelectric energy pumps your irrigation water, it lights your homes, it helps to reduce your water costs, it provides energy for industries that process the extra products from your farms.
>
> Low-cost hydroelectric energy will attract other industries to your region and stimulate small businesses in communities near your farms.

Declaring that "hydroelectric power is one of the most important factors in determining the feasibility of many projects," Mr. Gardner remarked:

> . . . Great river basin plans such as those for the Missouri, the Columbia, and the Colorado could not be seriously considered were it not for the revenues which will come from power sales. The future irrigation development of the West and of the nation is largely possible only because of the river power that heretofore has gone to waste.

To add emphasis to his comments about "low-cost power," the speaker asserted that

No conscientious guardian of the Federal Treasury could recommend these projects if the vast blocks of power were to be marketed only at the highest rates which it seemed possible the market would bear. In the first place, you can't sell the nearly 2,500,000-kilowatt capacity which will ultimately be installed in the Missouri basin without developing new power industries, and you can't do that without low rates. In the second place, no man alive knows what competitive power rates will be twenty years from now, much less half a century in the future.

ADDING that Interior's power policy is based squarely upon congressional enactments, the Assistant Secretary referred to ten separate laws under which Federal power agencies give preference in power sales to public agencies and cooperatives. The public, he said, represented by these local organizations, "should enjoy the full benefit of all economies that can be gained from public ownership of power systems . . . Congress has provided . . . that power shall be sold to all (with first preference to these groups), at the lowest possible rates consistent with sound business principles." He continued:

. . . It is obvious that to sell the power at such rates it is necessary to have transmission lines to carry it from power plant to consumer. If all publicly produced power were delivered to the customer over the transmission lines of private companies, the people would be paying the middleman profit, and thus losing the economy made possible by production of power at government plants.

Federal transmission lines are, moreover, essential to maintain the bargaining power for the people. None of you would consider it good business to promise never to sell your crops to anyone other than one person. No more should the United States be forced to sell at the dam to only one private power company.

After thus definitely setting forth Interior's policy as to the transmission of power produced at Federal public projects, Mr. Gardner remarked: "I do not, however, suggest that there is not ample room for both private and public power in the development of our country."

Advancing the view that large quantities of cheap hydro power will aid industrialization within the river basins, the speaker made this revealing statement with respect to the "sharing" of costs in future reclamation developments on a regional basis:

The great river valleys of the West will receive the primary attention of the Bureau of Reclamation during the next generation. We have just about finished the major single-purpose irrigation projects, and there do not remain many undeveloped sites so happily formed and strategically located that they are in themselves an economically feasible project for irrigation alone. We must from now on expect to call on power and navigation and flood control and wild life to join in with irrigation to share the costs and the benefits of our major projects of the future. We must, moreover, call upon one project to aid the other and to make our plans upon a regional rather than a local basis.

This is all to the good. If our rivers and canals are interconnected, and if our transmission lines tie in, we can produce more irrigation water and flood protection and firm power than if each project stood on its own feet alone.

MICHAEL STRAUS, commissoiner of the Bureau of Reclamation, stated in his address that reclamation development "is the one type of Federal public work which must pay for itself in hard cash," adding:

. . . It is time we see to it that reclamation is segregated from other categories of works and is accorded its proper preferred position as a unique Federal regenerative activity. It is dynamic in its effects on industry and business throughout the nation and a prerequisite if the United States is going to clothe, feed, and maintain its steadily increasing population up to American standards. It is time we see to it that the whole nation knows that reclamation is no newfangled type of get-rich-quick western promotion.

Remarking that irrigation of arid lands is the primary purpose of the Reclamation Bureau, the commissioner said that power generation, while secondary, is "vital and necessary." He continued:

. . . Power has become the paying partner in most present and future reclamation works that makes them financially feasible. Don't be fooled on this. It has to be low-cost power or the irrigationist loses—loses not only as a big power purchaser and consumer but also as a water user. Run up your reclamation power rates and we no longer command and create the wide power markets that produce the revenues required to aid irrigation. Lose those broad low-cost power markets and most of your present reclama-

tion construction and even more of your future jobs go out the window under existing law as financially infeasible.

Mr. Straus recommended, at considerable length, changes in the reclamation laws, which he declared to be necessary because of the complex multiple-purpose projects to be executed on a valley-wide scale.

Included in his suggestions for liberalization of these laws was this one:

> Why should we insist, as the law now does, that water users return all allotted costs of construction in forty to fifty years for dams, reservoirs, and canals with a proved useful life of 100 or 200 or, for all we know, thousands of years? Railroads, power companies, and other public service corporations are set up on a perfectly proper and legal basis that provides financing contemplating repayment only within the useful life of the works built. Of course, they generally never repay their construction investment but merely keep their plant in shape and then refinance and refinance all within the useful life of the works. That is considered sound practice. Why does the great United States, when it undertakes to aid its own citizens develop their own national resources, impose such harsh terms? Reclamation must—until the law is changed. You can speed that change.

THE address of William E. Warne, assistant commissioner of the Bureau of Reclamation, was devoted to "The Development of the Colorado River Basin." After sketching the history of projects already installed on that river, he talked chiefly about the prospective second stage of development of the basin, which he said is set forth in a comprehensive report recently presented to the Secretary of the Interior.

The report shows, he commented, that there are 134 projects within the basin worthy of consideration. In addition to more than 2,500,000 acres of land which these 134 projects would irrigate, they would provide 38 hydroelectric power plants, with a total installed capacity of over 3,500,000 kilowatts.

In declaring that "every state and every locality of the Colorado river basin will reap rich rewards and the entire nation will benefit from a sound second-stage development," Mr. Warne added his voice to those of the previous speakers in urging the need throughout the basin of "low-cost power." He gave the following reasons:

> Los Angeles and southern California generally need power that the second stage will make available in the lower river. Southern Nevada and Arizona need part of the power, as well. . . . The metropolitan areas of Salt Lake City and Denver need plentiful low-cost hydroelectric power, and they, too, must have the support of supplemental water diversions from the Colorado river. New Mexico and Wyoming and the other upper basin states are critically in need of further irrigation development within the basin. To demonstrate how acute this requirement for new irrigation and industrial development is, let me cite the fact that in 1940 the density of population within the Colorado river basin was but 3.6 per square mile, less than one-tenth of the national average of 44.2.
>
> New wealth and activity of extreme importance are possible through the application of a part of the great reservoir of hydroelectric energy to the development of the latent mineral resources of the basin. . . .
>
> The second stage will place other great dams in the main stem, stretch high-voltage lines over other deserts to additional cities, bring water through diversion tunnels, aqueducts, and through canals to found and support cities, and to create and sustain great new farming areas.

IT is of interest to note that the definite and detailed declaration of policy disclosed by these top officials of Interior and the Reclamation Bureau, in urging that cheap hydro power is essential to carrying forward their reclamation projects, has special significance by reason of the audience addressed.

Attending this convention were hundreds of representatives of irrigation districts and water conservation groups from the western states. The Reclamation Bureau seeks the support of these association members to further its requests of Congress for approval of additional projects and for appropriations of moneys to carry them out.

Is it possible that this concerted insistence upon low-cost power, together with extensive facilities for its transmission, being so essential to reclamation projects, is prompted by the signs of reluctance on the part of members of Congress to look with favor on such broadening of Interior's public power activities?

Wire and Wireless Communication

UNLESS the Dodgeville & Union Mills Telephone Company complies with the commission's order of November 9, 1945, to provide adequate service, the public service commission of Wisconsin in its order, dated October 10, 1946, states it will institute a lawsuit which, if successful, will for the first time establish its power to force a utility into receivership.

The inability of this telephone company to supply adequate service is symptomatic of conditions applying to many of the more than 600 small telephone companies operating in Wisconsin, it was learned.

The commission in its order reviews its findings of November 9, 1945, directing the company to rehabilitate its plant and equipment to enable it to provide reasonably adequate service. On February 15, 1946, the company filed a report with the commission stating it planned to do certain work designed to improve service, but the commission states the improvements contemplated fall far short of compliance with its order of November. Two other hearings were held to permit the company to make a further report as to what it proposed to do, one on June 14th and another on September 4th.

"The evidence shows that it was impossible for the officers of the Dodgeville & Union Mills Telephone Company to ascertain who its stockholders were," says the commission in its order of October 10th.

"However, a meeting of approximately twenty persons in attendance was held, and a resolution purporting to authorize the officers and directors of the corporation to take the steps necessary for compliance with the commission's order of November 9, 1945, was presented and passed upon at such meeting. The resolution was defeated by a vote of 13 to 2.

"The situation thus presented is not unprecedented and it presents a difficult problem.

"HOWEVER, we do not believe that the failure of the officers of this corporation in keeping proper corporate records or in managing its corporate affairs so as to destroy its ability to function as a corporation, will serve as a means of escaping the duty and obligation of the corporation as a utility to perform its obligations to the public.

"If steps are not promptly taken by the telephone company directed to a compliance with the provisions of said order of November 9th, the commission will take appropriate steps to place the property and assets of the company in the hands of someone who is both willing and able to provide the service to the public which that company presently owes. The order hereinafter made is subject to an application for rehearing with respect to the matters determined therein. If no such application is made and unless the commission is advised within the time for making such application that the Dodgeville & Union Mills Telephone Company will proceed with compliance

of the requirements of said order of November 9th, the commission will institute the proceeding, as above indicated, which is deemed necessary to bring about a compliance with that order."

* * * *

INACTION of the department of public utilities of the state of Washington is threatening to bring about the collapse of the Moab-Newman Lake Telephone Company, a coöperative association, providing telephone service for about fifty subscribers in the area, it has been revealed by officials of the company.

Its affairs have reached a "critical stage," finances are "short," and the plant is "deteriorating."

The Washington department is urged to take steps necessary to see that either the Washington Independent Telephone Association or the Pacific Telephone & Telegraph Company be permitted to take over and continue the service, but action is lacking, charged Moab-Newman executives.

Moab-Newman stockholders invited Pacific to take over, it was disclosed, and it agreed to do so if not required to release an equivalent number of its subscribers in another area.

W. G. Perrow, Moab-Newman director, said they contacted C. E. Johnson, director of the Washington independent association, who also is the head of the Interstate Telephone Company. He advised that his company was not interested in taking Moab-Newman over and "had no solution to offer."

Mr. Johnson also stated "they would not permit the Bell system to make any arrangements with Moab-Newman unless the Bell people would release an equivalent number of subscribers at some other point to Interstate," according to Mr. Perrow, who quoted from correspondence with the department of public utilities.

MR. PERROW said the action was apparently in line with the Kingsbury commitment and "the people of the Moab-Newman lake area are getting jittery about the prospect of losing their telephone service entirely in the near future," he said.

"Much discussion has taken place in the area about the merits of an agreement or commitment that will permit one group to refuse to furnish a public service and at the same time prevent another company from doing so," Perrow commented.

"Our firm conviction is that the Kingsbury commitment was intended only to prevent one group from absorbing a lucrative field without a corresponding release of similar patronage."

Finances of the Moab-Newman are running so low, he said, that the company expects to abandon all service in about thirty days.

* * * *

CONTINUED interest in increased rates for telephone companies was noted in a recent letter from the Washington headquarters of the United States Independent Telephone Association to its member companies. It reviewed petitions by 50 independent telephone companies through the Washington State Independent Telephone Association for increased rates, now being heard by the Washington Department of Public Utilities. It also pointed to statewide rate increase petitions by the Southern Bell Telephone & Telegraph Company now pending before the Kentucky and North Carolina commissions.

* * * *

ANOTHER indication of the alertness of regulatory commissions to the service problem is found in the recent action of the Georgia commission in citing 117 telephone companies in the state, including Southern Bell Telephone & Telegraph Company, to appear before it on October 23rd. The order directed all companies to present information showing the amount of materials now on hand and the dates of orders on undelivered equipment. It was understood that the commission also had asked telephone equipment manufacturers to be on hand and to furnish information as to production schedules. The states which have so

far issued show-cause service orders now include Alabama, Florida, Georgia, Kentucky, Michigan, and Mississippi. Until telephone companies can gain some momentum in dealing with the postwar service problem we are likely to hear of still more cases.

* * * *

THE Federal Communications Commission has given an indication of its thinking on the question whether an independent company exempt from its jurisdiction under § 2(b)(2) of the Communications Act will lose its exemption status if it uses radio to supplement wire telephone service.

The FCC has advised the Northern Ohio Telephone Company, Bellevue, Ohio, as follows:

> Since the proposed radio operations [of that company] will be point to point in nature, and only between the points within the same state, the commission is of the view, as presently advised, that the grant of the foregoing [radio] applications will not alter your company's present status under the [Communications] act.

The Northern Ohio Company had filed application for an experimental license to provide radiotelephone service between Port Clinton and Kelley's island on Lake Erie, a distance of 13 miles, with 15 watts of power and directional antenna. When transmitting the application the company's president expressed the view that the proposed radio use would not interfere with the company's status as a carrier exempt from FCC jurisdiction, but he was careful to state that, if the commission had a different opinion, the application should be considered as withdrawn. The commission's letter of reply, dated September 19th, read as follows:

> The commission has noted the statement in your letter of May 16, 1946, concerning the status of your company as a "connecting carrier" under § 2(b)(2) of the Communications Act. Since the proposed radio operation will be point to point in nature, and only between the points within the same state, the commission is of the view, as presently advised, that the grant of the foregoing applications will not alter your company's present status under the act. However, it should be noted that the commission's formal determination of the status of this company as being only partially subject to the act was made in March, 1936, hence the conclusions expressed in this letter are not to be construed as constituting a further formal determination by the commission that your present operations, which may be different from those existing in March, 1936, are necessarily such as to entitle your company now to the status of a connecting carrier under § 2(b)(2) of the act.

* * * *

THE Washington Supreme Court has held in the case of Foss *v.* Pacific Telephone & Telegraph Company (October 1, 1946) that the telephone company is liable for damages arising from the destruction of a subscriber's buildings by fire because of an alleged negligent delay in supplying telephone connection, which delayed the arrival of the fire department in time to extinguish the fire. The court held that damages recoverable for a breach of contract in such a situation would be limited to those which may fairly and reasonably be considered either arising naturally from the breach itself or supposed to have been in the contemplation of the parties when the contract was executed. Losses from the fire, as alleged in this case, were held to be special damages which did not arise from the breach of contract.

* * * *

TENNESSEE Utilities Commissioner Leon Jourolmon, Jr., called attention to an advertisement in a Nashville newspaper recently and declared, "This is a warning to the people of Tennessee. Telephone users should be on guard against higher telephone rates."

The ad, signed by Southern Bell Telephone & Telegraph Company, said "The pay-out is increasing faster than the take-in," and added that "no business can give adequate service without adequate earnings."

Commissioner Jourolmon, who consistently has opposed all attempts by utilities to increase rates, declared "Southern Bell is beginning a propaganda campaign to convince the people of the state that their telephone rates should be increased."

Financial News and Comment

By OWEN ELY

Simplifying Prospectus Requirements

SOME of the new utility stocks offered in 1946 are selling at substantially higher yields than the old-line seasoned issues. For example, Columbus & Southern Ohio yields nearly 6 per cent and Dayton Power & Light 5.6 per cent, compared with 4.7 per cent for a seasoned Ohio stock, Cleveland Electric Illuminating. The recent average for ten high-grade electric-gas operating company stocks was 4.8 per cent, and the newer issues would appear to average about three-quarters per cent more than this.

The usual explanation appears to be that this year's offerings were not properly spaced apart and that the investment market was "swamped." Hence, a secondary selling job is necessary to get the floating supply into strong investment hands and put the new stocks on a par pricewise with the older issues. One handicap in effecting this appears to be the strict interpretation of the provisions of the Securities Act of 1933 by the Securities and Exchange Commission. The act seems to be very poorly worded and a clarifying amendment would seem to be in order. Section 5(a) of the act states:

> Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise. . . .

However, the act exempted all securities already outstanding at the time it was passed, as well as various kinds of securities, such as municipal bonds, most railroad securities, etc. Thus there is a sharp cleavage between old-line issues and the new ones which have appeared since 1933.

UNSOLICITED brokerage transactions are exempt from the requirements of § 5, as are also transactions by a dealer after one year from the date of original offering (§ 4, paragraph 1). This is interpreted to mean that, for a period of a year after issue, no broker or investment banker can issue a descriptive memorandum of any kind on a new issue and send it to his mailing list, unless he also sends prospectuses to the same mailing list. Since mailing lists usually run into thousands of names (only a small percentage of which will probably have any interest in the purchase of the security) the cost of printing and mailing these thousands of prospectuses makes the whole operation so difficult and expensive as to be impracticable. The rule is not being fully adhered to, as some firms continue to issue memos on securities less than a year old, making use of involved hedge clauses which appear to be of doubtful legal protection. Other houses are obeying the SEC mandate that any descriptive memorandum, no matter how carefully worded, constitutes indirect means "to sell or offer to buy such security." Thus descriptive literature on recent issues, giving later or more readable information than that contained in the prospectus, is, in effect, barred from the mails because of the high cost or impracticability of meeting SEC legal requirements.

The SEC is doubtlessly anxious, in its other rôle as manager of the integration program for utility holding companies, to do all in its power to aid the sale of new

utility securities by the holding companies. A number of holding company programs are now stymied because it is difficult to carry through plans for the sale of operating or holding company stocks, which sales are an integral part of the programs.

WHY can't the SEC lay out a form for a "short prospectus" which could be printed on both sides of a legal size sheet of paper, and which could be reproduced in large quantities by the company involved, or by financial services, for use by brokers to supplement their own statistical memos? This would reduce the expense handicap by which new securities are affected in any secondary selling campaign.

Such help is particularly needed in the case of the new utility stocks which are listed on the New York Stock Exchange. Strange as it may seem, these stocks are under a handicap as compared with over-counter issues, since dealers buying and selling the latter issues can obtain a larger profit than the commission obtainable on the Stock Exchange. Such dealers therefore have a greater incentive to urge their customers to buy unlisted utility stocks. This applies particularly to local over-counter dealers in the "home territory" of the utility company involved.

So far as the writer can recall, the only summary of a prospectus used by a utility company was that prepared by Engineers Public Service sometime ago in connection with the offering of the preferred stock and bonds of Virginia Electric & Power Company, although this was incomplete and did not contain any earnings data. A better method is the revival of the old-time advertisements, which occurred recently in the offering of H. J. Heinz Company preferred and common stocks by a Morgan Stanley syndicate. (Incidentally the offering proved a success despite its bad market timing.) Why couldn't the SEC permit such a summary to be used in lieu of a prospectus, in secondary selling operations, beginning, say, a month or two after the underwriting has been completed, or after the stock has been listed on an exchange?

SEC Chairman James J. Caffrey, soon after taking over his administrative duties, indicated that he wished to clarify and encourage the use of the "red herring" prospectus, holding that the mailing of such a prospectus does not necessarily constitute solicitation of an order. But this raises some questions as to the reliability of the preliminary prospectus, since it is usually subject to constant change to conform with technical requirements as the commission makes them known to the registrant.

IN connection with the discussion of the "red herring," it may be noted that a memorandum from Chief Counsel Edward H. Cashion to the commission (publicly circulated by the SEC) states:

> The proposals relate to the use of red herring prospectuses and summaries. . . . it seems probable that summaries might serve a function which red herrings may not accomplish, since it is likely that summaries would be circulated more generally among members of the investing public. Red herrings frequently get only to dealers and large investors. In addition, some investors may prefer information in more concise and less complex form.

The summary, according to this memo, would be filed with the SEC a stated period of time before release, and would bear a legend limiting its use to informative purposes only.

Mr. Cashion, in discussing the proposed summary, evidently had in mind its use only in advance of the offering date, as a supplement to the "red herring" prospectus. But why should the summary necessarily be limited to the pre-offering period—if useful then, why would it not be useful later? Any such summary sent out to a broker's mailing list could bear a notation that a prospectus would be promptly mailed to anyone interested in considering purchase of the security described; and in any event a prospectus would be mailed (under present well-observed rules) whenever any purchase is made. The summary might well refer by page and heading references to the more ample information contained in the prospectus.

There might of course be some other

solution—the prospectus might be photographed down in size and reproduced on thin paper to reduce the mailing cost. But the most sensible solution seems to be to permit circularization of a comprehensive summary giving the vital earnings and balance sheet data, and briefing other topics such as regulation, litigation, franchises, indenture provisions, etc.

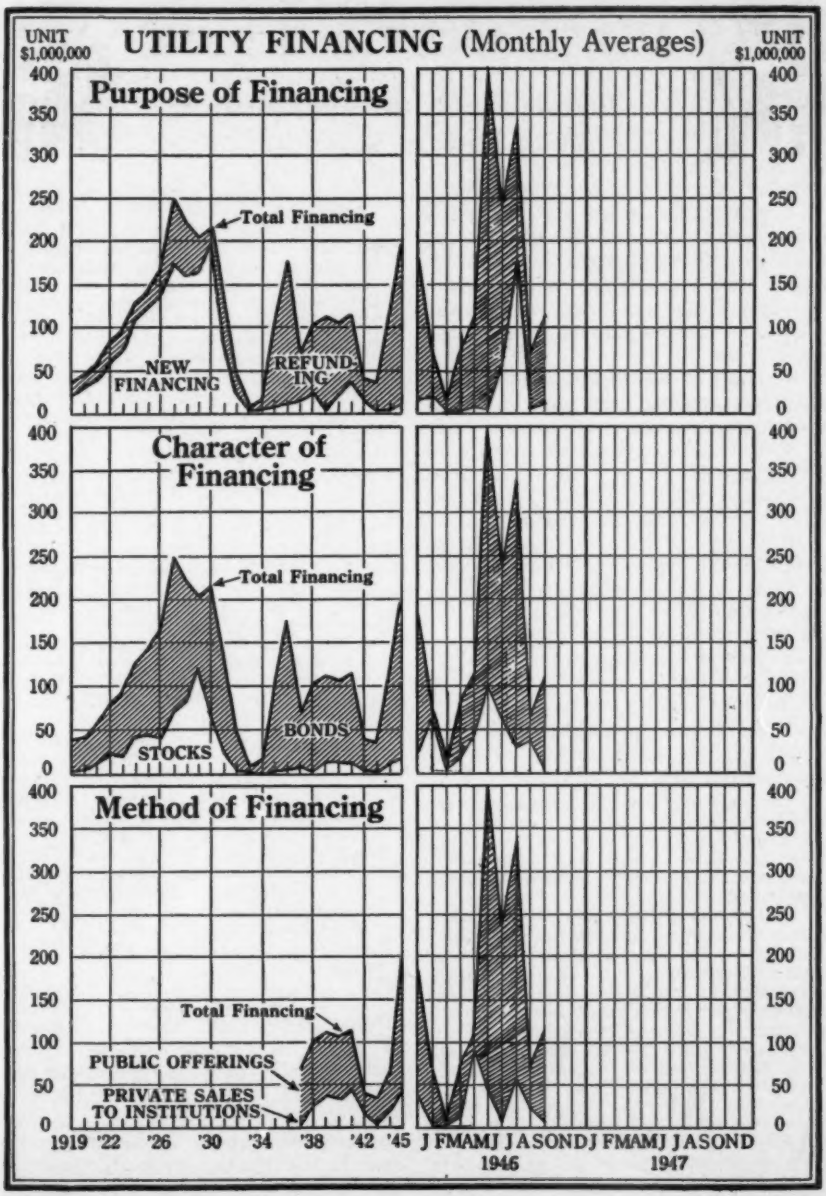
New Financing

THE sharp decline in the stock market has not had any great repercussions in the investment bond market, but the flow of new offerings (which had reached the highest levels of recent years a few months earlier—see accompanying chart) slowed to a trickle in October. The only important offering was the $75,000,000 Pacific Telephone & Telegraph 2¾ per cent debentures (readily sold) and several small issues. The Street is now looking forward to the huge telephone issue. American Telephone and Telegraph has registered $350,377,300 convertible debentures 2¾s due 1961, which will be offered to stockholders at par in the ratio of $100 bond for each 6 shares of stock held as of November 8th. Warrants will be issued about November 18th, and the offering will not be underwritten. The bonds are convertible into stock at $150 (now selling around 174) from April 15, 1947, through December 14, 1958 (payable by surrender of $100 bond and $50 cash). The bonds will be dated December 15th and will mature in fifteen years.

PUBLIC UTILITY SECURITY OFFERINGS IN THIRD QUARTER OF 1946

Date of Offering	*Moody Rating*	*Bond Issues*	*Amt. (Mill.)*	*Offering Price*	*Principal Syndicate Head*
7/3	A	Cal. Elec. Pwr. 1st 3/76	$16.0	$104.50	Halsey, Stuart
7/10	A	Brooklyn Union Gas gen. 2¼/76	34.0	103	Halsey, Stuart
7/12	A	Missouri P. & L. 1st 2¼/76	7.5	102.06	White, Weld
7/12	Baa	Portland Gas & Coke 1st 3¼/76	10.0	101.46	Halsey, Stuart
7/17	Aa	Amer. Tel. & Tel. deb. 2⅝/86	125.0	100.85	Mellon Securities
July	—	Avalon Tel. Co. Ltd. 1st 3½/66	1.4	101	W. C. Pitfield
7/18	Ba	Gatineau Power 1st 3¼/70	10.0	104.50	Dominion Securities
7/17	Baa	Gatineau Power 1st 3/70	45.0	104.37	First Boston
7/17	Ba	Gatineau Power deb. 2¾/61	9.5	101.23	First Boston
7/25	Aa	Rochester Tel. 1st 2⅜/81	6.2	101.17	Halsey, Stuart
7/26	Ba	York County Gas 1st 3½/76	1.6	101.92	A. C. Allyn
8/7	Aa	Yonkers E. L. & P. deb. 2⅝/76	9.0	100.75	Morgan Stanley
9/12	A	Col. G. & E. deb. 3¼/71	77.5	100	Morgan Stanley
9/12	A	Col. G. & E. ser. deb. 1⅞/47-56	20.0	‡1.20%-2.25%	Morgan Stanley
9/25	Aa	Tampa Elec. 1st 2⅜/76	7.5	99.48	Goldman, Sachs
		Preferred Stocks			
7/2		*El Paso Nat. Gas 4.10% pfd.	7.5	$109	White, Weld
7/12		Missouri P. & L. 3.90% pfd.	4.0	104	Glore, Forgan
7/25		*Black Hills P. & L. 4.20% pfd.	1.4	110	Dillon, Read
7/29		*Newport Elec. Corp. 3.75% pfd.	.8	102.50	Stone & Webster
8/2		*Northern States Pwr. (Minn.) 3.60%	27.5	102.75	Dillon, Read
Aug.		Northwestern Util. Ltd. 4% pfd.	3.0	100	Nesbitt Thomson
8/27		**Otter Tail Power 3.60% pfd.	1.7	99.25	Glore, Forgan
		Common Stocks	*No. of Shs.*	*Offer. Price*	*Principal Syndicate Head*
7/11		Central Ohio L. & P.	30,000†	$32.50	First Boston
7/24		Florida Public Utilities	50,000	14.25	Stockweather
8/27		**Otter Tail Power	28,815	51.25	Glore, Forgan
9/11		**Cincinnati G. & E.	1,447,525	26.00	Blyth & Co.

* Subject partly or wholly to stockholders' acceptance of exchange offer or subscription rights. ** Unexchanged or unsubscribed portion. † Approximately 12,135 shares were offered, the balance having been subscribed by stockholders. ‡ Yield.


UTILITY FINANCING (Monthly Averages)
UNIT $1,000,000
UNIT $1,000,000
Purpose of Financing
Total Financing
NEW FINANCING
REFUNDING
Character of Financing
Total Financing
STOCKS
BONDS
Method of Financing
Total Financing
PUBLIC OFFERINGS
PRIVATE SALES TO INSTITUTIONS
400
350
300
250
200
150
100
50
0
1919 '22 '26 '30 '34 '38 '42 '45
J FMAMJ JASONDJ FMAMJ JASOND
1946
1947

What Others Think

Gas Industry's Convention Was Highly Successful

WITH an attendance of some 6,000 people, interested in the various branches of the gas industry — both manufactured and natural—the twenty-eighth annual convention of the American Gas Association, held in Atlantic City, October 7th-11th, was an outstanding success.

Meetings of the many sections of the association, among them technical, commercial, accounting, and public relations, as well as general sessions, were held throughout the week. Papers were read and discussions held upon subjects touchin all aspects of the gas business.

In connection with this AGA convention, the Gas Appliance Manufacturers Association had an extensive exhibit in Convention Hall, at which was displayed a wide variety of appliances and equipment of interest to the industry.

Among the important speakers to whom AGA members were privileged to listen was Secretary of the Interior J. A. Krug, who stressed the necessity of intensified research. He said, in part:

> It is my belief that the attainment of the high standard of living and security and freedom for all Americans that we all so devoutly desire can only come from the understanding coöperation of business, government, and labor.
>
> Holding so strongly to this belief, it is most encouraging to me to find an industry which has from its earliest days coöperated fully and wholeheartedly. The numerous coöperative research and development projects in which the American Gas Association and the Interior Department's Bureau of Mines have joined are evidence that government and business are not two rival predatory animals which must be ever at each other's throats.

AFTER discussing certain research projects upon which government and industry have coöperated in the past, the Secretary continued:

> An oil and gas division has been established in the Department of the Interior to coördinate the work of various departmental agencies with other departments of the government, so that the greatest benefit may be obtained from all government work relating to oil and gas. This division coöperates very closely with the oil and gas industry through a representative industrial council.
>
> Your industry and the Interior Department long have recognized the need for modernization of the Federal mineral leasing statutes so as to provide the utmost opportunities for development of the gas and oil resources in the public lands of the United States. Our efforts along these lines produced tangible results in the last session of Congress through the enactment of what at one time was familiarly known as "S 1236," but which is now Public Law 696. . . .
>
> What can the gas industry do in this coöperative development? I think it is generally agreed, within the industry and the government, that it can intensify its research activity. Not only can the gas association sponsor valuable research projects; individual companies will find that it is profitable business to invest money in scientific research.
>
> The industry can redouble its conservation activity. There is no man in this room today who can justify the wastage of natural gas which is lost in connection with petroleum production. . . . Yet there is a bright side to the industry's conservation activity. In few other industries is it so clear that conservation means not storage, nonuse, and hoarding, but intelligent controlled consumption—consumption at rates and under conditions which maintain a stable industry and continuous supply of the product to the consumer at a fair price.

R. H. Hargrove, vice president of United Gas Pipe Line Company—elected as president of AGA at this convention—told his audience that the natural gas industry is hopeful that the Federal Power Commission has been convinced of some of its inconsistencies and that clarification of the Natural Gas Act and clear demarcation of the commission's jurisdiction may result. This

jurisdictional problem he considered vital, in view of a $190,000,000 expansion program planned by the natural gas industry.

CHARLES I. FRANCIS, attorney, of Houston, Texas, urged the industry to "secure from Congress appropriate clarifying amendments to the Natural Gas Act" so that the statute would conform to the intent of Congress when it enacted the measure in 1938. He remarked:

> It was never thought that the language of this act would be interpreted by the (Federal Power) commission and the courts in such a way as to authorize control over any phase of conservation, production, and gathering of gas or direct sale thereof to consumers.

William W. Bodine, financial vice president of the Penn Mutual Life Insurance Company, Philadelphia, Pennsylvania, talked about "The Financial Outlook for the Manufactured Gas Industry." In view of the prospective expansion plans of this industry, which will call for substantial amounts of new capital, the practical points presented by the speaker should be of very real interest to every gas company executive who has to do with financing problems.

Mr. Bodine prefaced his detailed suggestions with these pertinent comments:

> As you gentlemen doubtless realize, the industry in the eyes of some institutional investors and financial commentators has during recent years, if not been under a cloud, at least not been looked upon with as bright a light of optimism as has shone upon the electric utility business and the telephone business. Like those two industries, however, the manufactured gas industry requires large funds for productive plants involving advance planning and commitment, and since these funds must be raised in the market place for money it is important for you to show off the industry in the best possible light.
>
> Adequate financing at reasonable cost is essential to you if you are to maintain (or attain, if still on the way) your ideal of the best possible service at the lowest possible cost to the consumer. . . .
>
> Just as in your operations you are in competition with electricity, with coal, oil, and other fuels, for the consumer's dollar, so you are in competition with other industries for the investor's dollar. Therefore, the investor as well as the consumer needs to be cultivated and educated.
>
> Let us analyze some of the thinking of the investor. I do not pretend to analyze the passing whims or vagaries of the individual investor, but rather the processes of mind of those responsible as trustees for the investment of substantial aggregate sums of money entrusted to their care by hundreds of thousands or millions of individuals.

THE speaker then dwelt upon the searching and exhaustive studies which must be made by institutional investors into every phase of an industry, all of which, he said, could be summed up by one word—"management." Financial management, he added, is just as important a segment of the whole as any of the others. Mr. Bodine made this clear in stating:

> . . . while you have a commodity and a service to sell, your operations must be financed, and, in the public utilities and heavy industries, that means new capital. . . . You must sell securities and you should continuously cultivate that market.

Then, in question after question, the assembled gas men were given a first-hand illustration of the "searching" inquiry they must expect to be subjected to when seeking to arrange new financing for their companies. Returning to the general problem, Mr. Bodine continued:

> . . . We all know that the cost of money is an important part of the over-all cost of the service rendered by a manufactured gas company, just as it is with other companies providing utility service; that costs of materials and labor today are higher than ever and continue to rise—but you should know that money is available to the utilities today at about the lowest cost in history, and that that is true of the manufactured gas companies.
>
> On the one hand stands the investor, who wants an adequate return for the risk he assumes. On the other hand stands the company, which wants its money on the most advantageous terms. There is a common meeting ground to be found. The cost, of course, is largely dependent upon the credit of the company and the type of security sold—debt, preferred stock, or common stock. . . .
>
> While debt financing seems to be the order of the day and does offer certain present advantages provided the company has adequate coverages both from an asset and earnings standpoint, please do not think that I am an advocate of debt. There can be no surer way to close the door to preferred or equity

financing than overextension of long-term debt, particularly without adequate amortization. Witness the railroads, and even some of our friends in the electric light and power business. In this respect it has always seemed to me that the gas industry has had a great advantage in that it was old, wise, and seasoned, has lived through a century of ups and downs, of booms and depressions, and learned well the importance of watching the almighty dollar. Extravagance has been notable by its absence; conservatism is shown by the record.

After thus summing up the situation, and citing several factors bearing upon the creditable standing of the manufactured gas industry, Mr. Bodine drew this conclusion:

> . . . as a whole the manufactured gas companies pursue conservative financial policies, have a reasonable satisfactory outlook, and should be able to continue to raise new money, whenever required, at a cost comparing favorably with that obtained by their competitors.

THEN, in closing, he said that if his conclusions as to the soundness of the industry are right—and he felt that they are substantiated by the record—he would suggest for consideration these two things:

> 1. Gather and prepare statistics which will be as accurate and dependable as you can make them.
> 2. Educate institutional and other investors as to the desirability of manufactured gas company securities as investments by adequate presentation of such statistical and factual material.

In view of his former active association with the gas industry, and his intimate experience with institutional investment policies, it would appear that AGA members were fortunate in being given specific suggestions, instead of generalizations, by Mr. Bodine, relative to so important a phase of their business as is the seeking of new capital funds. His recommendations for the gathering of statistics, and the education of investors as to the desirability of gas securities as investments, sound an essentially practical note to all who have personally to do with gas company financing.

N. C. McGowen, president of United Gas Pipe Line Company, submitted, as chairman of the association's committee on natural gas reserves, its first report. This showed total proved recoverable reserves of natural gas in the United States as of December 31, 1945, of approximately 148 trillion cubic feet. This committee expects to make a report each year.

There were fifty-four geologists and engineers who coöperated in its work.

Gardiner Symonds, president, Tennessee Gas & Transmission Company, Houston, Texas, told the convention that something must be done to conserve the waste of gas that is still going on in the nation's oil fields. He expressed the opinion that this waste is no fault of the operators, but one of economics, as the price of natural gas is too low to make the capture of most of this waste gas feasible. He offered this solution to a rate-making agency:

> . . . by beating down price, save the city housewife 10 cents a month on her bill, yet by that same action take from the producer the incentive to save his waste gas with the loss of many dollars worth of valuable gas the net result. So long as the American economy is competitive, coal, oil, and other fuels will act as a ceiling to prevent gas prices reaching a point above the level of true value.

E. M. THARP, vice president and general manager, the Ohio Fuel Gas Company, Columbus, Ohio, presented a studied paper on "Our Equity in Industry." He declared that the industrial market for gas offers more challenging possibilities than any other field with which the gas business has contact. "Our equity in industry," he said, "is a basic interest vital to the rounding of our load curves and efficient development of full earning possibilities." He further added:

> These are rather conclusive statements to begin with and deserve consideration of background by way of understanding them. Let us then begin by consideration of the fuel itself and its industrial applications. It must meet economically the competition of other fuels, since it is only by such advantage that we may be in a position to offer a service to take any permanent hold on the industrial market.

Experience is establishing that gas has, within its utilization, inherent qualities that cannot be found in any other fuel. These inherent qualities, of course, have to be brought out through development and research and can be best utilized only if the heating process of any particular industry is built around this fuel.

After outlining in brief detail some of these inherent qualities known to gas men, the speaker continued:

Obviously such an extraordinary fuel has an essential character to progressive production in industry and offers such economic implication as ability to pay higher wages, create better working conditions, and at the same time produce better and more products at less cost. As the gas industry makes such an outstanding tool available to general industry it necessarily incurs responsibility for continuity and adequacy of service, since industry must completely depend upon a service around which it has built its industrial heat applications to the exclusion of any other fuel. In the heat-treating and chemical industries these applications have progressed to such an extent that operations are stopped cold whenever such natural gas supplies are not available.

Commenting that these "extra special gas values" cannot be developed where gas is sold on an "interruptible" basis, Mr. Tharp stated:

. . . It is only as availability of gas for all-year service improved that its advantages of control, flexibility, and chemistry were developed, giving it an essential character for which today there is no substitute. These changes and improvements have been carried forward beyond the expectations of the customers who originally, more or less reluctantly, were persuaded to use gas for their fuel requirements, but also beyond the expectations of gas companies and equipment manufacturers who were urging gas installations.

Now while industry may find gas so desirable as a processing fuel, the question naturally arises as to whether such industrial markets are desirable to gas companies. In the case of our company, industrial load accounts for about 40 per cent of total sales volume, with an 82 per cent load factor. The load factor of our domestic and commercial sales is about 40 per cent and house heating about 24 per cent. It will be apparent that the industrial load raised our over-all load factor to 50 per cent. As house-heating saturation increases and domestic load factor shifts from 40 per cent toward 24 per cent, the importance of compensating high-load factor industrial sales becomes more pronounced.

It was the view of this gas company official that it is not correct to say that the industrial load is the best load or more desirable than the base domestic load for cooking, water heating, and refrigeration—the domestic and industrial loads are complementary and the advantages derived from each reflect in favor of the other.

Mr. Tharp discussed at some length the sale of gas for central heating purposes, which he said is "growing by leaps and bounds." He then went into some detail as to measures which might be adopted to minimize the effect of this load upon investment and operations. In brief, the points he made were these:

. . . First, to seek a compensating and balancing summer load, and, second, to build our industrial load so that heating sales represent a lower proportion of the total sales.

The opportunities in the first direction are somewhat limited. . . . The opportunities in the second direction, that is building year-round industrial load, seem almost unlimited, and it is not here necessary to dwell particularly on the theme. I would only point out that such load should be well diversified as between industries. Our business is bound to follow the general economy trend or cycle of business activity, but if the proper attention and effort are given to the diversity of industrial applications, our business in the industrial field need not follow the cycle of any particular industry or activity.

Asserting that it is an accomplished fact that our industrial machine is geared to gas, and consequently is dependent on gas fuel for continuing operations, the speaker remarked:

The last twenty-five years have evolved important changes. The development of methods designed to make the most of every potential advantage possessed by gas, both by concerted action on the part of our industry and by these industries themselves, has resulted in a condition which you cannot escape taking into full account in considering these matters. . . .

Whether we have a moral responsibility to industries to continue to serve their needs is quite beside the point. The facts we must consider are that our industries are dependent on gas and that the communities we serve are in turn dependent for their well-being on the retention and prosperity of these industries. The availability of gas at favorable competitive prices was a controlling factor in securing, developing, and expanding

"I WANT TO MAKE A COMPLAINT ABOUT YOUR COMPLAINT DEPARTMENT"

our local industries, and community wealth and prosperity followed as a natural result....

The effect of gas curtailment or withdrawal will, of course, be greater in some plants or industries than others, but throughout our territory we could withdraw only an insignificant amount without setting up a chain of circumstances that might adversely affect all phases of our business. You cannot "eat your cake and have it too." House-heating load is luxury business. You can develop it only in parallel with or following the development of your industrial load, because this and prosperous communities are synonymous....

We have to accept our business as we happen to find it today with due recognition of the varied reasons and forces that have contributed to its present development. Perhaps we can't arbitrarily shift loads or load factors as we might wish to do. We have to be sure that whatever we do to effect these changes will not disturb the highly complex economic fabric upon which our business and communities are built.

At this convention, a forum of employee relations was held for the first time at these annual AGA gatherings. Papers were read by C. B. Boulet, director of personnel, Wisconsin Public Service Company, Milwaukee, and W. H. Senyard, the personnel director, Louisiana Power & Light Company, New Orleans. Prepared discussions upon each of these papers were presented; the first by M. V. Cousins, personnel director, United Gas Pipe Line Company, Shreveport, Louisiana, and the second by F. W. Fisher, director of personnel and public relations, Rochester Gas & Electric Corporation, Rochester, New York.

Mr. Boulet suggested, as a foundation

upon which a program for establishing sound employee-employer relations might be built, the following seven points:

1. Attitude of supervision.
2. Adequate and smoothly functioning grievance procedure.
3. Establishment of proper wage rates.
4. Conditions of work.
5. Standardization of policies and practices as between groups and individuals.
6. The item of security.
7. Need of keeping employees informed.

Each one of these points was developed in detail by the speaker, with specific comments as to various factors to be considered under each particular heading. Upon the seventh point, which he characterized as last, "but not least," he had this to say:

> Those of top management who are close to sources of information regarding their company's operations, its future and its problems, too often fail to appreciate the fact that employees who do not have this information cannot be expected to have their roots so deep in the organization as we have ours. They are not a part of the organization, either in knowledge or in action. It is a function of management and a necessity of a sound employee relation program to see to it that employees know what is going on and what is planned for the future. A prime function of management is to develop coöperation among a certain group of people in order that a certain end can be accomplished. Coöperation simply cannot be had unless employees understand for what they are coöperating.
>
> Again I say, enthusiasm is engendered by having a part in any operation. How can employees have a part in our operations unless they know something about them? I don't like to say this, but we could all learn a good lesson from certain union organizations. They have done a better job of telling their story to their members than any company of which I know.
>
> The employee information program is of such vital importance that I believe it should be ranked at the top of those things that are necessary to have a satisfied employee group. The question might well be asked, "What are some of the means that can be used for this purpose?" To that question I would give this answer. Certainly the company magazine should have this aim as one of its purposes. In addition to the company magazine, informational bulletins, letters from top management, periodic discussions between supervisors and men, slide films, pictures, bulletins, payroll inserts, and many other approaches are available. I am afraid that many people in top management feel that the giving of information to employees is not necessary, and is a frill that could be dispensed with, but I personally feel that in the long run there is nothing that would pay greater dividends than a sound employee understanding of the company's operations and its problems.

MR. SENYARD, in opening his remarks, commented that it was significant that this was the first time that part of a general session at this association's annual meeting had been devoted to an employee relations forum. This, he said, is a realization that personnel relationships transcend all departmental functions, and added:

> You people who are here today have come to this meeting to discuss matters of operation, finance, engineering, production, distribution, sales, and a multitude of other subjects of utmost importance to the gas industry.
>
> Yet, a casual reading of our daily papers and news magazines reveals that the matter of labor relations represents the difference between satisfactory performance in practically all spheres of activity.

Observing that there probably was never a time when those in the utility business have been faced with more complex and difficult problems than today, the speaker declared that an analysis of these problems will reveal personnel relationships as a common denominator of them all. And, further, that an unbiased, objective self-appraisal will probably lead to the conclusion that few of us, if any, are doing enough about this important matter.

Emphasis was placed by Mr. Senyard upon the need for employees to be told what is happening, whether it is good or bad. He continued:

> . . . Where there is understanding, there is little chance of misunderstanding. Understanding may be achieved by a 2-way information program—information to the employees which they are entitled to know and need to know to be better members of their company, and information from the employees to those managing the company to help make it a better organization for all concerned.

But a plan, to be successful, must have

active support, and Mr. Senyard added:

> The mechanics of a plan to accomplish this objective are rather simple, and are probably well known to all of us. Accomplishing the desired objective though, requires more than a good plan. It requires a sincere desire on the part of a company to improve its employee relations through better information; and it requires the coöperative effort and perserverance of many. The plan itself will die in the early stages without active support.
>
> Many an excellent plan has fallen by the wayside and been condemned as a failure because the top group support wasn't there. More than lip service is needed. A plan must be a company plan, participated in by the key group managing the affairs of the company as well as those whom we are attempting to train.

As an outline, in a broad sense, for a training program, it was suggested that these three points be considered:

1. Executive or administrative training.
2. Supervisory training.
3. Employee training.

Then as aids in bringing about the desired objectives, the following were set forth as being helpful:

1. Regular scheduled meetings.
2. Company policies on questionable items reduced to writing and distributed to those responsible for administering and interpreting them.
3. Attractively prepared and presented training material.
4. Visual education.
5. Adequate reports to know the results of the classes and training material.
6. Personal contacts.

And, as advantageous in determining what the employee is thinking about his job, his company, and industry, these factors were listed by the speaker:

1. The employment interview.
2. Periodic progress interviews with results recorded for future reference and comparison.
3. Suggestion systems.
4. Personal contacts.
5. Classroom discussion.
6. Morale surveys by outside agencies.
7. Grievance procedure.
8. Exit interviews.

Mr. Senyard expressed the view that "in promoting better employee relationships we are attempting to make a sale," commenting:

> We are trying to sell an idea. Our supervisors and our employees are the prospects. Our company and our industry are our products. Training and information programs are the media through which we hope to make the sale.

An outline was given by the speaker of some of the ways his company carries on its employee training program. This recital touched, in some detail, various points already referred to in his remarks. In closing, he said:

> . . . In advocating to you today a comprehensive, well-directed program of better relations through better information I am not trying to sell you, even if that were necessary, on the idea that an activity of that kind should be a part of every company's personnel plan. If it didn't go beyond that, its value to a company could be questioned. But it does. The level of achievement in any sphere of activity in our respective companies will fluctuate according to the level of understanding and relationship that exists with our employees. That understanding and relationship may be influenced with training.
>
> The collective thinking in your company is that of your employees. The collective thinking in America is that of thousands of groups of employees just like yours.

Judging by the large attendance at this AGA convention, the interest displayed in the papers presented, touching so many phases of the business, and in the reports of numerous committees—together with the plans revealed for an all-out drive to increase the gas load through wider use of gas appliances—it would appear that the gas industry is geared for progressive action in the coming competition for the consumer's dollar.

—R. S. C.

¶ *"If all publicly produced power had to be delivered to ultimate consumers over the transmission lines of private companies, the public producers, such as the Bureau of Reclamation, would be virtually at the mercy of the private companies so far as sales are concerned."*

—Harvey F. McPhail,
Director of power utilization,
Bureau of Reclamation.

The March of Events

In General

Resolutions Adopted at Reclamation Meet

RESOLUTIONS vigorously protesting President Truman's stop order on Bureau of Reclamation work and opposing creation of valley authorities such as the proposed Missouri Valley Authority were adopted last month by the National Reclamation Association convention, meeting in Omaha, Nebraska. (See, also, page 612.)

At the closing sessions, the association also awarded the 1947 convention to Phoenix, Arizona.

Association officers were asked to "constantly and diligently urge Congress to appropriate money for the immediate construction of projects authorized by Congress, and whenever funds which have been appropriated are impounded to protest vigorously against such action, and urge their immediate release."

The President on August 12th limited Bureau of Reclamation work to $85,000,000 for the current fiscal year, thereby stopping work on many projects near the contract-letting stage. There solution endorsed the stand taken at a national conference in New Orleans September 20th "protesting the curtailment order limiting expenditures for reclamation improvements."

In a message to the convention, Mr. Truman assured the group that "reclamation construction will be pressed as rapidly as possible." The President said:

"More than 10,000,000 of our western people live in areas to be served by irrigation, power, and municipal water developments in the authorized reclamation program, and the widespread demand for its completion is recognized.

"My particular concern is that new and supplemental irrigation shall be extended to increase the number of family-sized farms for veteran settlement and to provide for the expanding population of the West. Full advantage also must be taken of hydroelectric development to give financial assistance to irrigation and to transmission systems to carry power to new industries, farms, and urban areas."

Turning from the economy order, the convention asserted that valley authorities would "destroy programs for complete development of our natural resources now under way by the existing Federal agencies"; give the people of an affected area no voice in selection of those in authority; and would transfer from state to Federal courts jurisdiction over litigation in which an authority is involved.

Other resolutions asked that the Bureau of Reclamation's "fixed acreage limitations"—the rule that no person may irrigate more than 160 acres with water from a reclamation project—be liberalized; asked correction of a situation where "water users and other local interests have been required to bear the costs of regenerative national benefits in addition to the proper costs of local benefits"; reaffirmed the stand that power produced by reclamation projects should be sold at higher rates—sufficient to repay power costs at 3 per cent interest—in contradiction to present lower rates which the association claims leave too great a burden on water users; favored protection of upstream water rights against "downstream demands for water to be used in the development of hydroelectric power."

Governor M. Q. Sharpe of South Dakota told the association that private power companies are thwarting development of public power "by appeals to passion and prejudice and by misrepresentation." In one of the closing addresses, Governor Sharpe, who heads the Missouri River States Committee of Governors, declared "power should be so cheap and abundant that every farmer and every rancher would feel free to use it every feasible way."

He said rural electrification districts are not

communistic nor socialistic, but "are in fact free enterprises in themselves, and the price which their bonds bring from businessmen indicates they're doing all right."

SEC Authorizes Merger

THE proposal of the Metropolitan Edison Company, a subsidiary of the NY PA NJ Utilities Company, to merge the Edison Illuminating Company of Easton, Pennsylvania, into itself was sanctioned last month by the Securities and Exchange Commission.

Metropolitan Edison recently acquired all outstanding capital stock of Edison Illuminating. It will surrender these securities for cancellation at the time of the merger.

FPC Curb on Natural Gas Opposed

THE Natural Gas Industry Committee last month called for a legal ban against any action by the government to regulate the final use of its product.

In a brief filed with the Federal Power Commission in its natural gas investigation case, the committee urged that the Natural Gas Act be amended to prevent any FPC restriction for the purpose of "end-use" regulation, on the transportation or sale of gas.

"The anthracite and bituminous coal industries with their allies, the United Mine Workers and the railroads, are now engaged in seeking the aid of the Federal Power Commission in reëstablishing their lost monopoly," the committee said.

"That is why they have intervened to induce the commission to limit the transportation and sale of natural gas in interstate commerce."

The purchaser should be able to determine whether he should use gas or some other fuel, the committee said.

The consensus of final statements filed with the FPC on its 11-month investigation into present and future uses of natural gas for the purpose of formulating a national policy was that further FPC control of natural gas—particularly controls over production and end uses—would amount to nationalization of the industry.

Governor Robert S. Kerr of Oklahoma said: "For the Federal government to regulate production of oil and gas would be to nationalize the oil and gas industry, which is a basic industry, within the several states. This would lead to a centralization and concentration of tremendous industrial and political power which would be inconsistent with America's democratic form of government."

The Montana Board of Railroad Commissioners said the state would oppose "strenuously" any further Federal regulation of gas production, transportation, or sale within the state. Regulation of consumer sales of imported or exported gas "might well weaken the present control over utility rates and services" and give the Federal government indirect control over utilities, it said.

Mid-Continent Oil & Gas Association said Federal control of the end use of gas would lead to nationalization "not only of the gas industry, but practically all articles of commerce."

Taking issue with other state commissions which have opposed extending additional authority to the FPC, the New York Public Service Commission declared itself in favor of enlarging the FPC's powers for greater conservation of natural gas resources, provided the FPC is not allowed to encroach upon state functions and that state commissions be allowed to control natural gas service to consumers.

The commission's views were embodied in a statement addressed to the FPC, signed by Milo R. Maltbie, chairman, and Commissioners Neal Brewster, Maurice C. Burritt, George A. Arkwright, and Spencer B. Eddy.

The statement said the commission favored a clear-cut program limiting Federal activities to interstate operations. Pleading for a central conservation authority, the New York commission declared that "the best use of the available natural gas supply cannot be accomplished by each state acting independently, no matter how good its intentions may be."

Utility Rates Decontrolled

REQUESTED by PUBLIC UTILITIES FORTNIGHTLY on October 26, 1946, for a statement of his views on the relationship between the stabilization program and the determination of utility rates, Harry R. Booth, who has just resigned as utilities counsel and chief of the public utilities branch of OPA, admitted that there existed, very little, if any, stabilization prob-

lem in the determination of public utility rate increases.

Reviewing the history of OPA intervention in utility rate cases, he pointed out that under the original OPA Act utility rates were completely exempted from control and that in 1942 certain proposed utility rate increases were taken up by him with the late Senator Norris.

As a result of his interest in these matters, Senator Norris sought to have the OPA Act amended so that increases in public utility or common carrier rates could not be made without either the approval of the President or OPA. While the Senate adopted such an act, the House disagreed with the Senate, resulting in a compromise provision under which utilities and common carriers were prohibited from increasing their rates without notice to and consent to intervention by the President, or his agent. In his judgment, Booth said practically everything intended by Senator Norris' provision has been accomplished.

Commenting upon the index for utility rates, he said the Bureau of Labor index for electric rates in July, 1946, had declined to 89.6 compared with 94.6 in 1941, for gas rates the index for July, 1946, was 94.5 compared with 99.3 in 1941. For telephone rates the present index would also be lower except for the inclusion of the large Federal tax paid by telephone users. Street-car fare index had increased slightly to 104.7 in July, 1946, compared with 101.1 in 1941. Bus fares have declined to 99.5 compared with 100.3 in 1941. Labor, however, contributes a very large part of the total cost of local transportation service. On an over-all basis, the price level for the utility industry is now below what it was in 1941. As against this, there has been an over-all increase in prices of at least 35 per cent and this is rapidly going up as a result of OPA's present decontrol program. Other items in the fuel and lighting index such as fuel oil, which in 1941 was 110.5, had risen to 127.5 in July, 1946. Anthracite which was 107 in 1941 was 146.2 in July, 1946, and bituminous coal which was 109.6 had risen to 137.3 in the same month.

Existing state and Federal regulatory machinery is more than adequate to take care of the stabilization problem. The effective date of proposed increases of street-car fares in the most important pending rate cases, such as in Buffalo, Chicago, and Philadelphia, have been suspended by the respective New York, Illinois, and Pennsylvania regulatory bodies. Under nearly all state and Federal statutes, utility charges cannot be increased without a finding that the proposed charges would be reasonable. These standards will certainly make for no more rate increases than the standards underlying existing price legislation.

The rapidly changing purpose and policies in the carrying out of the price stabilization laws, however, are further factors why no stabilization problem exists in the utility rate field. The present law has as its purpose the achievement only of reasonable price stabilization. Congress has also laid down a definite program of gradual decontrol of cost of living and other commodities. OPA's present decontrol problem involving the removal from control of over 90 per cent of food as well as hundreds of other cost of living and other commodities has cut from the ground the former contention made by OPA in these cases that the program would be impaired if increases were made.

Reasonable price stability in the utility field, said Booth, is adequately assured during the remaining life of the present price laws. Whether utility rates should be reduced or increased is now entirely a question of local, state, or Federal public utility law.

The relatively few increases in the rates in the utility field are due not only to the coöperation which the utility industry and state and Federal utility regulatory bodies have given the OPA's program, but also due to the capable efforts of OPA's small staff, which dealt with these problems.

Engineers Arrive for Training

THIRTEEN electrical engineers from nine Latin American republics have arrived in the United States for a year of training under the direction of the Rural Electrification Administration, the Department of Agriculture announced recently.

The group will study the construction and operation of rural electric power systems. After an intensive English language course in Washington, the engineers will be trained both in REA headquarters and in the field, where they will inspect REA-financed coöperative rural electric systems, TVA facilities, and electrical equipment factories and visit universities and research centers.

Connecticut

Moves to Boost Bus Tax

THE Hartford board of street commissioners recently voted to ask Corporation Counsel Samuel H. Aron to draft legislation to force an increased contribution by the Connecticut Company to the city's treasury for consideration at the next state general assembly.

Charging that busses damage the streets in excess of the $61,000 now received from the state in an excise tax on busses, Alfred E. Moylan, president of the board, said he thought the excise tax should be doubled, or the city should be authorized to collect property taxes on busses, terminals, and other equipment.

Mr. Aron had informed the board that the state collects an excise tax equal to 3 per cent of the company's fares in the state, and prorates it to cities and towns in accordance with their bus route mileage.

State Superintendent Royal W. Thompson told the board he had always received excellent coöperation from the bus company. Mr. Moylan contended it derived "unfair" tax privileges.

District of Columbia

Utility Commissioner Appointed

JAMES W. LAUDERDALE, people's counsel for the District since 1944, was nominated to the District of Columbia Public Utilities Commission last month by President Truman. If confirmed by the Senate, Lauderdale will succeed James Francis Reilly, who resigned from the 3-member commission a year ago. The term expires June 30, 1947. Salary is set at $8,225, including the recently authorized increase.

Lauderdale is forty-one, and a native of Washington. He attended local schools and graduated from National University Law School.

He was appointed assistant corporation counsel in 1934, serving in that capacity until he was named people's counsel by President Roosevelt in March, 1944.

Indiana

Council to Probe Rates

WITH a report and recommendations by its finance committee as a basis for action, the Indianapolis city council recently was reported prepared to open an investigation of two public utilities in the hope of obtaining additional revenue for the city and lower rates for consumers.

The report, which Herman E. Bowers, committee chairman, said had been approved by Mayor Robert H. Tyndall, reiterated the previously announced policies of the council. This report discussed the Citizens Gas & Coke Utility and the Indianapolis Power & Light Company.

The report was presented following a special meeting of the council. In submitting it to the council, Mr. Bowers said the council is not a rate-making body, but it can "make investigations and turn over its findings to the public service commission for the commission's information."

Michigan

Would Reduce Rates

THE Detroit Edison Company recently filed with the state public service commission a formal request for permission to reduce charges to all classes of electric customers.

The request was contained in two petitions,

receipt of which was announced by William J. McBrearty, chairman of the commission, who fixed October 29th for a hearing in Lansing.

The first proposal would reduce by $1,500,000 bills to be sent to farm, residence, and commercial customers during the remainder of 1946. The second would effect a rate reduction of 3 per cent for service to industrial customers, effective January 1, 1947. The estimated saving to industrial customers for the year 1947 is $927,000.

The immediate reduction to the first class of consumers would amount to 30 per cent of one month's commercial bill and 15 per cent on the two month's residential bill. Commercial customers are billed monthly, so the entire 30 per cent would be deducted from their November bills. Since farm and residence customers are billed bimonthly, 15 per cent would be deducted from their November and December bills.

The discounts, if approved as proposed, combined with the rate reduction which became effective last January 1st, will bring the total 1946 savings to customers to more than $5,000,000. It was believed that the general rate reduction of last January would reduce customers' bills by $3,000,000, but the increase in the volume of business over the estimate made at that time brought the customer savings to more than $3,500,000.

Gas Appeal Planned

REBUFFED in the Ingham Circuit Court, the state public service commission was recently reported planning to appeal "as high as necessary" to defend the validity of its order forbidding the Panhandle Eastern Pipe Line Company to make direct sales of natural gas to industrial customers.

"We will certainly appeal to the Michigan Supreme Court," said William J. McBrearty, commission chairman. "If necessary, we will carry the case to the United States Supreme Court. This case is tremendously significant to the people of Michigan."

Circuit Judge Paul G. Eger upheld the pipeline company's argument that direct sales to the Ford Motor Company in Detroit constitute interstate business, not subject to state regulation.

Officials of the Michigan Consolidated Gas Company, intervening in the case, argued that Panhandle Eastern's direct sales to Ford would cut the gas company's revenues $1,600,000 a year, and might necessitate higher gas rates to other gas users.

Judge Eger concluded that control over such sales was solely a matter for the Federal government.

"We contend that any company which enters Michigan to do business in a field where there is an established public utility must be subject to state regulations," McBrearty said. This is also the attitude of the National Association of Railroad and Utilities Commissioners, he said, which filed a brief in the case.

Panhandle Eastern seeks to sell 50,000,000 cubic feet of natural gas daily to Ford, and McBrearty said the company has declared that it will sell directly to any other industrial customers it can obtain.

New York

Subways Voted Improvement Costs

NEW YORK city's board of estimate, in its first major step toward the rehabilitation of the city subway system, has appropriated $31,291,000 to cover the cost of contracts recently awarded by the board of transportation for the purchase of 400 streamlined subway cars and the lengthening of local platforms at nine stations to accommodate 10-car trains.

This action on the part of the board of estimate came less than twenty-four hours after it had asked the board of transportation to report on the amount of fare rise required on the city's unified transit lines to cover the cost of the $17,633,830 pay rise recommended for their 33,000 employees by Mayor O'Dwyer's advisory transit committee.

The 400 new subway cars will cost the city $27,400,000. Lengthening of nine subway station platforms will cost $3,891,000.

Oregon

Gas Employees Vote "No Strike"

A NO-STRIKE, no-lockout contract has been signed by Office Employees Local No. 11, AFL, on behalf of 250 employees of Portland Gas & Coke Company, it was announced.

Because the company is a public utility, it was said, the employees want to settle their disputes by peaceful means and have provided arbitration as the method. The contract calls for sick leave and seniority provisions.

Pennsylvania

Pittsburgh Strike Ends

PITTSBURGH'S power strike, which had crippled that city for twenty-seven days, was called off after the striking utility workers voted to accept arbitration of their collective bargaining dispute with Duquesne Light Company.

Members of the independent union, the Independent Association of Employees, voted 1,197 to 797 in favor of the arbitration.

Pickets were withdrawn immediately and normal electric service was expected to flow by midnight, October 20th.

The announcement of the vote result was made by Sheriff Walter Monaghan of Allegheny county, who supervised the balloting. Ballots were cast by 1,994 members out of a total membership of 3,200.

The question of arbitration had been the chief bone of contention in negotiations seeking to end the paralyzing walkout which had curtailed electrical service and crippled business. Arbitration had been opposed by the leaders of the independent union on the ground that arbitrators would be limited in granting wage increases because of Wage Stabilization Board restrictions. The union, on September 28th, had rejected arbitration by a vote of 1,170 to 553.

Included in the union's demands are a 20 per cent wage increase, a master contract for nine operating units, improved pension plan, and other benefits. The present hourly average scale is $1.18 and such an increase would boost it to $1.41. Duquesne Light had offered a 5 per cent wage increase, and withdrew it after the union members voted rejection on September 28th.

Earlier in the month, AFL streetcar operators and bus drivers, deciding to ignore picket lines of striking power union workers, returned to their jobs after an 18-day paralysis of Pittsburgh's transportation system.

The trolley workers' union—the Amalgamated Association of Street Electric Railway Workers—voted 901 to 79 in favor of working.

Washington

U. S. Aid Asked in Dispute

THE United States Conciliation Service has been asked to assist in negotiations in an attempt to avert a walkout of employees of the Seattle Gas Company about November 1st, John England, secretary-treasurer of the Firemen & Oilers Union, Local 193 (AFL), said recently.

Twenty-one members of the union and 87 members of the International Chemical Workers Union, Local No. 232 (AFL), were involved in the negotiations. The Central Labor Council of Seattle has been asked to put the company on its "unfair" list, clearing the way for a strike.

England said negotiations had been under way since July 24th, the unions requesting that minimum wages be increased from 93½ cents an hour to $1.15.

A. Ray Smith, general counsel for the company, said the company voluntarily increased wages 10 per cent September 1, 1945, and would be unable to grant another increase without raising gas rates. The state department of public utilities would have to approve rate increases.

The Latest Utility Rulings

Reproduction Cost Rejected as a Measure of Value For Sale to Coöperative

THE Wisconsin commission dismissed joint applications of the Wisconsin Hydro-Electric Company and Badger Electric Coöperative requesting approval of the latter's acquisition of the former's gas and electric properties for a base purchase price of $3,449,000, subject to certain adjustments. The coöperative also unsuccessfully sought authority to operate as a gas and electric utility and to issue mortgage notes totaling $3,649,200, payable to the Federal government over a 25-year period with interest at the rate of 2 per cent a year.

In reply to the selling company's request that the commission give principal consideration to reproduction cost in arriving at the value of the property, the commission said:

> Reproduction cost is deserving of little consideration in determining the value of property unless the property is able to earn a reasonable return on the reproduction cost. This commission has not contemplated and does not contemplate giving major consideration to reproduction cost in the fixation of rates. To do so would create an unstable rate condition as variable as construction costs which, by their very nature, are normally controlled by open competition. . . . The unit cost of this utility property will increase with the passage of time as low-cost units are retired and replaced with high-cost units. From the evidence it appears that more than the usual amount of such replacements soon must take place in this property. As a result it will have more than the normal amount of high unit cost property within a few years and for a time will find it more difficult than most utilities to earn a reasonable return on the investment.

Furthermore, it was pointed out, the use of reproduction cost in the valuation of existing property of the seller was unjustified in connection with the issuance of securities having a term of twenty-five years, during which price levels might fluctuate greatly from existing prevalent prices.

Capitalized earnings were also rejected as a criterion of value in view of the fact that the area was lightly settled, had no large communities, and thus would result in increased plant investment per customer and would require higher rates than in more densely populated areas to provide a reasonable return on the investment.

The coöperative contended that the commission should not apply the standards relating to the issuance of securities by public utility corporations to the proposed issuance of mortgage notes to secure the loan of Federal funds from the Rural Electrification Administrator. The commission conceded that neither coöperatives serving only their members nor municipal utilities are public service corporations within the statutory definition of that term and, therefore, do not have to meet the standards for their securities provided by the legislature for a public service corporation. However, when a coöperative corporation deliberately undertakes to engage in business as a public utility, the commission opined, it must and does place itself in the same situation and subject to the same legal limitations applicable to privately owned public service corporations.

The risk of Federal funds contributed

by the taxpayers of the nation would be involved in the proposed loan, it was said, and, regardless of who the immediate prospective purchasers of securities issued by public utilities may be, the commission pointed out that it has consistently held that the protection required by the statutes should be applied in favor of all possible investors.

It was ruled that the commission may not approve 100 per cent debt financing of a public service corporation. The commission said that is what it was being asked to do in this case; in fact, it mentioned, the request was being made by a corporation which would not only have no surplus but would start its business career with debts approximately $500,000 in excess of the value of its assets.

Commissioner Bryan, in a dissenting opinion, conceded that the decision and order of the majority were well reasoned and logical if the precedents dealing with the regulation of traditional profit-seeking public utilities were to be followed. He was of the belief that under reasonably efficient management, with the ploughing back of profits into the enterprise, and with the enjoyment of tax exemptions, the financial position of the coöperative would, after a reasonable period of years, be as strong or stronger than that of a public utility organized for profit which might take over the property under the usual form of financing and at a lower purchase price. Mr. Bryan said:

> Both the Congress of the United States and the legislature of Wisconsin have unmistakably shown by the trend of recent legislation an intention to foster the coöperative movement. The coöperative before us is actively supported by the REA which is advancing the funds for the purchase. I think that every doubt should be resolved in favor of the approval of the transaction, and on that basis I am of the opinion that the applications should be granted.

Re Wisconsin Hydro-Electric Co. et al. (2-U-2127, DR-5, 2-SB-265, 2-WP-657).

Public Need Considered Controlling Factor in Award of Motor Carrier Certificate

THE Utah commission overruled competitors' objections that a proposed motor carrier service was not feasible and approved the operation after public need for it was shown. The feasibility of a proposed service, the commission observed, can be determined only by experience, and a carrier willing to take a gamble and attempt to render fast carrier service should be given the opportunity to do so.

Competitors' protests that their ability to furnish service might be impaired by the grant of an additional certificate were dismissed with the following comment:

> However, the paramount issue, and controlling factor, is what the present and future public convenience and necessity require, and is the standard by which the proposed operation must be judged. A common motor carrier must afford reasonably adequate service to the public to be protected in that service from competition, and if such common carrier is unable to do so by reason of poverty, lack of business, and any other reason, the public should not be deprived of reasonably adequate and efficient transportation service if available elsewhere.

Re Cook (Case No. 2794).

Suspicion of Gambling Insufficient Grounds for Refusal To Restore Telephone Service

THE petition of a subscriber for an order directing restoration of his telephone service was granted by the Connecticut commission, which considered the evidence of unlawful use insufficient to justify the company's refusal to serve.

The subscriber conducted a tavern

which police suspected was a location where horse bets were received. His telephone was removed by police officers who arrested him on gambling charges. During the pendency of the trial and thereafter the company, refused to restore service.

A criminal court acquitted the subscriber of all charges after finding that a telephone message intercepted by police, "Kings Flesh, 5, 5, and 5, and Sagamore, 5, 5, and 0, and in reverse, 5, 5, and 0; have you got it?" was not of itself sufficient to identify it as the placing of a bet.

The subscriber's acquittal of the criminal charges did not of itself suffice as a reason for restoration of service, but, the commission continued, service should be withheld only on substantial evidence of unlawful use; mere suspicion is insufficient. *Re Cologiavanni (Docket No. 7822).*

Simplification of Western Union Rate Schedule Ordered

THE Tennessee commission not only denied the Western Union Telegraph Company's application for authority to increase its intrastate rates generally 10 per cent but stated its belief that existing rates should actually be lowered and that discriminatory features of the present schedule should be corrected. The company had not proposed to increase rates for special services, such as railroads, newspaper services, stock market, sport and racing news services. According to the company's proposal the burden would fall on the general public.

The records of the commission reveal that Western Union's gross receipts for 1941 set a record high and that the minimum rates for that year were lower than for the year 1943. Therefore, the commission said, the low rates apparently stimulated a greater volume of telegraph business and indicated good reason for the lowering of existing rates.

Western Union's rates were based on a table of squares. That is, Tennessee was divided into squares and the rate between any two points in the state was determined by the squares where the points might be located. The squares were numbered and Tennessee intrastate telegraph rates were filed in the form of a "table of square rates." These rates ranged from 30 cents to 36 cents to 48 cents for full rate telegrams. Rates for additional words, night letters, day letters, serials, and longrams were determined by the base rate or full rate applicable to the particular square, with certain exceptions.

This setup appeared unduly complex to the commission. It believed that if the table of square rates was abolished and if a flat rate between all Tennessee Western Union offices was put into effect, the rate structure would be materially simplified and the resulting low flat rate would stimulate the volume of business needed to meet the company's revenue demand.

The company had been giving certain individuals the privilege of "franked" messages or free telegrams. This was deemed to be a special privilege directly and unlawfully discriminating against other telegraph users. Abolition of this practice would enable the company to receive new revenue and weed out an unlawfully discriminatory feature. Similarly, the commission observed:

> Preferential "press rates" are also in effect. These provide a special privilege to the newspapers. The present-day "press rate" is one-third of the full rate and the night "press rate" is one-sixth. For example, a 10-word telegram, which would cost the public 30 cents, could be sent for a newspaper at "press rates" during the day for 10 cents and at night for 5 cents. Undisputed testimony before the commission was that "press rates" are not compensatory.
>
> It is interesting also to note that if regular rates had been charged for 1945 "press rate" business, the revenue the company would have received from this type of business alone would have been several thousand dollars more than the $22,000 it now is seeking. This, therefore, presents another excellent source of revenue. To abolish "press rates" will correct another unjust and unlawful discrimination.

The commission also noted that it was not satisfied that the company had fully

explored the possibility of raising even more revenue from its big leased wire subscribers, the railroads, stockbrokers, newspapers, and racing services. Further study of this was suggested by the commission, which intimated a possibility of further lowering rates. *Re Western Union Telegraph Co. (Docket No. 2778).*

Coal, Rail, and Labor Interests Oppose Natural Gas Pipe Line

THE Federal Power Commission authorized the Mississippi River Fuel Corporation to construct and operate additions to its existing pipe-line system. Interveners representing coal, labor, and railroad interests opposed the granting of the authority on the ground that coal would be displaced by reason of the contemplated use of the additional gas to be provided by the proposed facilities.

Concerning the objection, it was observed that, although there might be a loss of business on the part of such interveners, evidence as to the extent of displacement was somewhat conjectural. It did not show that the entire added capacity of 50,000 thousand cubic feet would displace coal; nor did it show that such quantity of gas was needed to meet additional firm demands, principally by utility companies.

The utility load increase, the commission pointed out, was expected to result from new homes using gas for space heating, together with the installation of water heaters and refrigerators, and an increase in consumption of present domestic, commercial, and industrial customers.

The interveners objected to a proposed changeover from mixed to straight natural gas by one of the applicant's utility customers which served the city of St. Louis. The commission noted that the utility had reached the peak of its present gas manufacturing ability, and estimated that the cost of additional gas manufacturing equipment to meet its growing load would be excessive.

The city of St. Louis favored the changeover and represented that the introduction of straight natural gas would aid its program of smoke abatement, as well as enable the inhabitants to obtain gas at a lower cost. Furthermore, the Missouri Public Service Commission favored the conversion. The Federal Power Commission believed that the proposed facilities were not required solely for conversion by one of its customers to straight natural gas but were necessary whether or not the customer utility converted to straight natural gas. Conversion, the commission said, added only 20 per cent to the natural gas requirements for the area.

That another utility customer was uncertain whether it would convert to straight natural gas was not deemed determinative of the issues involved.

The commission ruled that in a controversy of this nature the public interest is controlling. It concluded that the evidence showed conclusively a demand by the consuming public, especially domestic users, for natural gas rather than oil, wood, or coal. It declared that it had not been shown by the interveners that it would be in the public interest to deny such consumers the use of natural gas as proposed by the applicant. In this connection the commission said:

> As stated by us in *Re* Natural Gas Pipeline Co. of America, Docket No. G-651, Opinion No. 133, May 10, 1945, "the distributing utilities which purchase from Natural and Chicago District provide public utility gas service. Reasonable firm requirements must be met by these utilities if the public interest is to be served. This commission is charged by Congress, under the Natural Gas Act, with the obligation to issue certificates of public convenience and necessity for natural gas facilities and service when found to be required in the public interest. The economic impact upon the coal industry, the railroads, and those employed in these industries, constitutes just one of the factors to be taken into account in this determination."

Re Mississippi River Fuel Corp. (Docket No. G-713, Opinion No. 141).

Other Important Rulings

An investigation by the California commission into the rates and service of a water utility disclosed that private contracts for service were hindering service to regular utility customers. The commission, in ordering that such contracts be terminated, described them as an unfair burden upon regular customers and ruled that private uses cannot be carved out of a dedicated public utility water supply. *Re Haney (Topanga Canyon Public Utility Water System) (Decision No. 39291, Case No. 4822).*

Applications by subscribers for improvement in telephone service resulted in an order by the California commission requiring the company to order and install new equipment and change much of its operating procedure. The commission considered the ability of a company to provide reasonably adequate service to existing subscribers and to continue to furnish such service a prime factor in determining how rapidly additional stations should be connected. *Doggett et al. v. California Water & Telephone Co. (Decision No. 39276, Case No. 4817).*

The Wisconsin commission considered a telephone coöperative's return of 6 per cent on its rate base reasonable and approved a new rate schedule yielding such return as just, reasonable, and not unduly discriminatory. *Re Prentice Telephone Coöperative (2-U-2203).*

A proceeding initiated by the California commission on its motion to determine whether the fares of a passenger bus company were unreasonable or discriminatory resulted in a commission order directing the establishment of through routes and the prescribing of joint fares. The commission ruled that discrimination resulting from a division of joint fares between bus companies whereby one of the lines might well receive less than its local fare and thus possibly discriminate against local passengers is neither undue nor unlawful. *Colberg et al. v. Stockton City Lines, Inc. (Decision No. 39300, Case Nos. 4745, 4785).*

An investigation by the Wisconsin commission into proposed rates for sale of wholesale power to a city resulted in a finding that such rates were unreasonable as they were based on the earnings of the purchasing utility and not on the actual cost of the power. *Re Wisconsin Rapids, 2-U-2152.*

Authority to operate as a motor carrier of grain and livestock will not be granted merely upon the desire of a private carrier to go into the trucking business, the Colorado commission stated in denying an application for a certificate. It must be shown that the authority to be granted will not impair the efficiency of authorized carriers and that there is a definite need for the proposed service. *Re Fornoff (Application No. 7761-PP, Decision No. 26724).*

An action against a shipper to recover demurrage charges was decided for the railroad by a Nebraska court, which overruled the shipper's defense that its gravel shipment could not be moved because it was frozen in the railroad cars, and held that the railroad was not obliged to render either steam or water service to facilitate unloading, where the railroad tariff covering the shipment contained no provision authorizing such service. *Chicago & Northwestern Railway Co. v. Mallory et al, 23 NW2d 735.*

A plan for separating the grades of a railroad and an express highway was approved by the New York commission after considering all pertinent factors, such as cost, safety, location, interference with train operation. *Re Superintendent of Public Works (Case 12648).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

VOLUME 65 PUR(NS) NUMBER 3

PREPRINTS

OF CASES TO APPEAR IN

Public Utilities Reports

COMPRISING THE MORE IMPORTANT DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

INDEX

SECURITIES AND EXCHANGE COMMISSION

Re Republic Service Corporation et al.

File Nos. 54-63, 59-47, Release No. 6820
August 1, 1946

APPLICATION *for approval of plans for recapitalization of holding company under §§ 11(d) and 11(e) of the Holding Company Act; issuance of order withheld pending amendment of plans in accordance with opinion*

Security issues, § 5.1 — Bond redemption — Premium — Holding Company Act.

1. The retirement of an indebtedness cannot be considered voluntary, and a redemption premium is accordingly not payable as such, where the retirement occurs because of the compulsion of § 11 of the Holding Company Act, 15 USCA § 79k, whether to meet a § 11 order or in anticipation thereof, p. 105.

Security issues, § 5 — Bond redemption — Compliance with Holding Company Act.

2. The payment of a holding company's bonds at principal amount plus accrued interest was deemed to constitute fair and equitable treatment for the bondholders where the bond retirement was required by § 11(b) of the Holding Company Act, 15 USCA § 79k(b), p. 105.

Corporations, § 22 — Recapitalization under Holding Company Act — Participation by common stockholders.

3. Recapitalization plans, filed by a holding company to effectuate compliance with § 11 of the Holding Company Act, 15 USCA § 79k, properly denied participation to the common stock where there had been no change in the company's financial condition since an earlier order of the Securities and Exchange Commission to invalidate a provision thereof denying the common stock any participation in the reorganization, where the company's past earnings had been inadequate to meet the dividend requirements of the preferred stock, where there was no indication that future earnings would be sufficient to pay off arrearages and to satisfy the current preferred dividend requirements, p. 105.

Security issues, § 96 — Recapitalization on common stock basis — Holding company simplification.

4. A plan providing for recapitalization of a holding company on a common stock basis and thus requiring the junior interests to make a substantial sacrifice is not fair and equitable to such interests when there is a feasible alternative method of recapitalization which, by retention of a certain amount of debt in the system, would provide for cash payment to the bondholders and would make available for the equity interests a more substantial share of the company's earnings, particularly where the subsidiaries of the holding company have no publicly held debt or other securities outstanding, p. 108.

Corporations, § 22 — Recapitalization plan — Holding company regulation.

5. Approval of any recapitalization plan under § 11 of the Holding Company Act, 15 USCA § 79k, requires a finding that the transactions proposed under the plan meet the standards of the other applicable sections of the act, p. 108.

Intercorporate relations, § 19.5 — Holding company simplification — Retention of small subsidiaries.

6. A holding company was allowed to retain its electric subsidiaries which were small in size and scattered throughout one state where the continued combination of such systems under the holding company's control was not so large as to impair any advantages of localized management, efficient operation, or effective regulation, and where none of the subsidiaries could be operated as independent systems without the loss of substantial economies, p. 110.

APPEARANCES: Francis H. Scheetz and Arthur H. Clephene, of Evans, Bayard & Frick, for Republic Service Corporation; Lynne A. Warren, for Irving H. Isaac; Lucian B. Carpenter, Henry C. Place, and Harold Dickey, of Barnes, Price, Deckert & Smith, for Pennsylvania Company for Insurances on Lives and Granting Annuities; Henry W. Pollock, for certain bondholders; Louis A. Green, of Stryker & Brown, holders of bonds, preferred stock and common stock; M. Morton Weinstein, for the Public Utilities Division of the Commission.

By the COMMISSION: Two plans for the recapitalization of Republic Service Corporation ("Republic"), a registered holding company, have been submitted to us for consideration. The company plan, filed by Republic under § 11 (e) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k (e), provides for conversion of the company's presently outstanding bonds and preferred stock into new common stock. A plan filed by Irving H. Isaac, a preferred stockholder, under § 11 (d) of the act provides for payment of the debentures in cash, sale of new debt securities and new common stock to raise cash for such payment, and issuance of new common stock to the preferred stockholders.

By our order of February 19, 1943,[1] Republic was directed to divest itself of its subsidiaries located in the state of Virginia, and to change its capitalization to insure that its corporate structure does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among the security holders, of Republic's holding company system.[2] In that order, having found that there was no equity in assets or earnings for the common stock, we expressly directed that the common stock was not to participate in the recapitalization.

Divestment of the Virginia subsidiaries was accomplished by sale thereof and application of the proceeds

[1] Re Republic Service Corp. (1943) 12 SEC 852, 48 PUR(NS) 149.

[2] In our order we reserved jurisdiction to determine whether all or any part of the Pennsylvania utility properties constitute an integrated utility system or systems retainable under §§ 11(b)(1)(A) and 11(b)(1)(C) and whether the nonutility ice and heating businesses in Pennsylvania are retainable in connection with any such utility properties.

to a 60 per cent pro rata payment of the outstanding principal amount of Republic's bonds, pursuant to a § 11 (e) plan of the company.[3] Meanwhile Republic had filed a further plan under § 11 (e) for compliance with § 11 (b) (2) of the act and the provisions of our 1943 order directing recapitalization of Republic, and Isaac had filed an alternative plan for such compliance. The proceeding on these plans and the § 11 (b) proceeding were consolidated, appropriate notice was given[4] and public hearings were held. Thereupon Isaac filed an amended plan, further notice was given,[5] the hearings were reconvened, and, after additional evidence had been received, the record was closed.

Briefs were submitted by the company, Isaac, and the indenture trustee for the bondholders, and oral argument was waived. The Commission, having examined the record and the briefs, makes the following findings:

Description of the Republic System

The Republic holding company system is composed of the following companies:

TABLE I

Company	Business
Republic Service Corporation	Holding Company
Abington Electric Company ("Abington")	Electric
Mauch Chunk Heat, Power & Electric Light Company ("Mauch Chunk")	Electric
Renovo Edison Light, Heat & Power Company ("Renovo Edison")	Electric
Brockway Light, Heat & Power Company ("Brockway")	Electric
Mercersburg, Lehmasters & Markes Electric Company ("Mercersburg")	Electric
Fulton Electric Light, Heat & Power Company ("Fulton")	Electric
Greencastle Light, Heat, Fuel & Power Company ("Greencastle")	Electric
Renovo Heating Company ("Renovo Heating")	Heating
Lehigh Ice Company	Ice
Susquehanna Ice Company	Ice
Republic Service Management Company	Service Company

All the above companies, except Republic and Republic Service Management Company, are incorporated and operate in Pennsylvania. Republic and Republic Service Management Company are incorporated in Delaware.

Republic's utility properties in Pennsylvania consist of five separate groups, each of which is relatively small in size, and none of which is physically interconnected or economically capable of interconnection with any other. The properties are scattered throughout the state, Abington and Mauch Chunk operate in separate areas in the east central section of Pennsylvania, Renovo Edison in the north central section, Brockway about 60 miles west of Renovo Edison's territory, and Mercersburg, Fulton, and Greencastle (known as the "Mercersburg group") in the south central section. Both Abington and Renovo Edison generate all their energy requirements, but the record indicates that plans are being carried out to abandon operation of Abington's

[3] Re Republic Service Corp. Holding Company Act Release No. 5731, April 16, 1945, enforced in the United States district court for the district of Delaware. This payment reduced the principal amount of Republic's outstanding bonds from $4,409,500 to $1,763,800.

[4] Holding Company Act Release No. 5243, Aug. 24, 1944.

[5] Holding Company Act Release No. 5939, July 16, 1945.

generating plant and to purchase all of its power requirements from a non-affiliated utility company. The Mercersburg group purchases about 90 per cent, and Brockway and Mauch Chunk purchase all of their energy requirements.

Balance Sheet

Attached hereto as Appendix A [omitted herein] are consolidated balance sheets of Republic as of August 31, 1945, per books and pro forma (1) giving effect to the company plan and (2) giving effect to the stockholder plan. All of the securities of the subsidiaries are owned by Republic.

The following table shows the consolidated capitalization and surplus of Republic and its subsidiaries as of August 31, 1945, per books, and adjusted to reflect underlying book values but without adjustment for dividend arrears on the preferred stock:

TABLE II

	Per Books		Adjusted to Reflect Underlying Book Values	
	Amount	%	Amount	%
Long-term Debt				
First Lien Collateral Trust Bonds, due 1951 ..	$1,763,800	50.6	$1,763,800	79.9
Capital Stock and Surplus (Deficit)				
Capital Stock				
$6 Cumulative Preferred, No-par, 17,581 Shares Outstanding Common, No-par, 54,468-13/20 Shares Outstanding	1,922,927[1]	55.1	1,922,927[1]	87.1
Earned Surplus (Deficit)	(199,982)	(5.7)	(199,982)	(9.1)
Less: Adjustment to Reflect Underlying Book Values	—	—	(1,278,472)	(57.9)
Net Capital Stock and Surplus (Deficit)	$1,722,945	49.4	$444,473	20.1
Total Consolidated Capitalization and Surplus ..	$3,486,745	100.0	$2,208,273	100.0

( ) Denotes red figure.

[1] The Preferred and Common Stocks are stated together as a single figure in the financial statements submitted by the company. The liquidation preference of the $6 Cumulative Preferred Stock is $1,758,100 plus dividend arrearages, which aggregated $1,396,599 or $73.75 per share as of August 31, 1945.

The collateral trust bonds are secured by a pledge of all the securities and open accounts of Republic's subsidiary companies except those of the ice and the management companies. They bear interest at 5 per cent, mature in 1951, and are callable on thirty days' notice at 105 per cent of principal amount plus unpaid interest.

The $6 cumulative no-par preferred stock is entitled to receive annual dividends of $6 per share before the payment of any dividends on the common stock, has a preference in voluntary or involuntary dissolution of $100 per share plus accrued dividends before any distribution may be made on the common stock, and is redeemable at the option of the company at $110 per share plus accrued dividends. The liquidation preference at August 31, 1945, of the preferred stock, including dividend arrearages of $73.75 per share or an aggregate of $1,296,599, amounted to $3,054,699.

Because of dividend arrears, the 17,581 shares of preferred stock outstanding have one vote per share. The

54,468 shares of common stock outstanding also have one vote per share, giving the common stock 75.6 per cent and the preferred stock 24.4 per cent of the voting power of the system.

Plant and Property

Below is a breakdown of the plant account of Republic's subsidiaries by types of property and reserves applicable thereto as of August 31, 1945:

TABLE III

	Gross Plant	Depr. Reserve	% of Depr. Reserve to Gross Plant	Net Plant
Electric	$2,831,244	$1,168,484	41.3	$1,662,760
Ice	103,732	67,527	65.1	36,205
Heating	51,818	50,409	97.3	1,409
Total[1]	$2,986,794	$1,286,420	43.1	$1,700,374

[1] In addition Republic carries on its books organization expenses of $11,423 and Republic Service Management Company furniture and fixtures in an amount of $2,531 against which a depreciation reserve of $1,189 has been accrued.

All of the electric properties, except those of Renovo Edison, of the Republic system are stated at original cost approved by the Pennsylvania Public Utility Commission. An original cost study of the Renovo Edison property made by Republic but not approved by the Pennsylvania Commission indicates that original cost exceeds book carrying value in an amount of $34,720.

The contemplated retirement of the Abington generating plant would reduce the consolidated property account by approximately $435,000 and the depreciation reserve by approximately $410,000. This would result in a reduction of the ratio of depreciation reserve to gross plant from 43.1 per cent to 34.2 per cent without taking into consideration the replacement of the retired plant by the installation of new transmission facilities.

The Proposed Plans

The Company Plan

1. Republic proposes to convert its bonds and preferred stock into a new single class of $15 par value common stock. The company's capital stock would be reclassified to authorize 120,000 shares of new common stock, of which 114,590 shares would be issued in exchange for Republic's bonds and preferred stock on the following basis:

a. 97,009 shares (84.66%) to the bondholders at the rate of 11 shares for each $200 principal amount.

b. 17,581 shares (15.34%) to the preferred stockholders on a share for share basis.

2. All bond interest would cease to accrue on the effective date of the plan. Interest accrued but unpaid on the effective date would be paid in cash at the time of the distribution of the new stock.

3. The book amount of Republic's investments in its remaining subsidiaries would be reduced from $3,105,262 to $2,190,000.

4. Republic would pay such fees and expenses as may be approved, allocated or awarded by the Commission.

5. A meeting of holders of the new stock to elect a new board of directors would be held not more than 120 nor less than 60 days after the effective date of the plan.

6. The plan contains a request that the Commission apply to a United

States district court pursuant to §§ 11 (e) and 18 (f) to enforce and carry out the plan.

The Stockholder Plan

1. Bondholders would be paid in cash the full principal amount remaining unpaid plus accrued interest to the effective date of the plan.

2. Republic would issue 70,324 shares of new $10 par value common stock. 35,162 shares (50 per cent) would be distributed to the present preferred stockholders at the rate of two shares of new common stock for each share of preferred stock now held. Preferred shareholders would also receive negotiable 30-day purchase warrants permitting purchase at $10 per share of two additional shares of the new common stock for each share of preferred stock. All shares of the new common stock not subscribed to through exercise of the warrants would be purchased at $10 per share by a preferred stockholders' group, one of whose members is Isaac. The plan anticipates that the value per share of the new common stock would exceed the proposed price of $10.

3. Funds for the retirement of the bonds would be obtained from:

a. The issue and private sale of $1,300,000 principal amount of 10-year secured debentures at 102 per cent of principal amount thereof with interest at a rate not exceeding 4 per cent.

b. The issue and sale of a 2-year $100,000 2½ per cent promissory note, secured by a pledge of Republic's interest in $107,500 of escrow funds set aside from the proceeds of the sale of the Virginia subsidiaries.

c. The issue and sale to preferred stockholders of 35,162 shares of new common stock at $10 per share through the use of negotiable warrants, as described above.

The stockholder group has agreed to purchase additional common shares at $10 per share to make good any loss Republic might suffer on said escrow funds, but Republic would reserve the right to dispose of such shares otherwise.

4. The plan would be carried out by new directors and officers to be elected within thirty days after entry of a Federal district court order enforcing the plan.

Earnings

Both plans are based on the company's estimate of future earnings set out hereinafter. Consideration of Republic's past and reasonably foreseeable earnings is thus necessary.[6]

Attached hereto as Appendix B [omitted herein] are consolidated income statements of Republic for the twelve months ended August 31, 1945, per books adjusted to exclude operations of the Virginia subsidiaries sold during the period and interest requirements on the bonds retired with the proceeds of such sale, and pro forma

[6] Of primary importance in considering any form of reorganization plan is the prospective earning power of the company.
Consolidated Rock Products Co. v. DuBois (1941) 312 US 510, 525, 526, 85 L ed 982, 61 S Ct 675; Group of Institutional Investors v. Chicago, M. St. P. & P. R. Co. (1943) 318 US 523, 540, 87 L ed 959, 63 S Ct 727; United Light & P. Co. (1943) Holding Company Act Release No. 4215, 49 PUR(NS) 8; aff'd (1943) 51 PUR(NS) 235, 51 F Supp 217; aff'd Securities and Exchange Commission v. United Light & P. Co. (1944) 53 PUR(NS) 129, 142 F(2d) 411; aff'd Otis & Co. v. Securities and Exchange Commission (1945) 323 US 624, 89 L ed 511, 57 PUR(NS) 65, 65 S Ct 483.

(1) giving effect to the company plan and (2) giving effect to the stockholder plan.

In discussing revenues and gross income of the subsidiaries now owned by Republic we have segregated the figures for Abington, the six other electric subsidiaries, and the heating subsidiary. No consideration was given to future earnings of the two ice subsidiaries since it is the expressed intention of the management to discontinue their operation and to dispose of the machinery. The company has estimated that $15,000 would be realized as salvage value for such machinery. As indicated before, Abington is about to abandon its power plant and substitute the purchase of power from a nonaffiliated company. At the same time sale of power to the nonaffiliated company, which has constituted a substantial part of Abington's revenues, will be discontinued. Consequently, future revenues may be materially less than past revenues.

Attached hereto as Appendix C [omitted herein] are condensed income statements of Abington, the other Pennsylvania electric subsidiaries and the heating subsidiary for the calendar years 1941 through 1944, the twelve months ended August 31, 1945, averages for the periods 1936 through 1940 and 1941 through August 31, 1945, and Republic's estimates for a "typical year" in the future.

Following is a tabulation of gross revenues of Abington, the six Pennsylvania electric subsidiaries and the heating subsidiary for the years 1936 to 1944 and for the twelve months ended August 31, 1945:

TABLE IV

Period	Abington Sales to Nonaffiliate	Abington Other Sales	Other Electric Subsidiaries	Heating Subsidiary	Total Sales Excluding Abington's Sales to Nonaffiliate
1936	$81,013	$211,247	$547,415	$19,301	$777,963
1937	81,903	222,258	564,917	20,183	807,358
1938	87,685	235,186	569,513	17,825	822,524
1939	84,996	230,487	537,438*	18,092	786,017
1940	85,984	233,331	563,950	19,139	816,420
1941	88,139	239,891	595,372	18,513	853,776
1942	87,379	237,968	629,724	19,483	887,175
1943	95,392	234,809	652,787	20,615	908,211
1944	91,320	243,771	677,877	21,840	943,488
12 Months 8/31/45	NA	NA	702,079	22,393	NA

* This decrease was due to the discontinuance by Mauch Chunk of power sales to a nonaffiliated utility company.

NA—Not available from the record.

The above table indicates a steady but rather slow growth of revenues which was not materially affected by the impact of the war.

Below is a tabulation showing the net operating income before Federal income taxes of Abington, the other six electric subsidiaries and the heating subsidiary for the years 1936 to 1944 and for the twelve months ended August 31, 1945:

TABLE V

Period	Abington	Other Electric Subsidiaries	Heating Subsidiary	Total
1936	$89,196	$78,028	$(4,290)*	$162,934
1937	84,126	118,441	3,302	205,869
1938	99,012	106,915	2,111	208,038
1939	80,309	129,544	3,773	213,626
1940	90,211	132,513	4,232	226,956
1941	91,524	130,831	3,665	226,020
1942	82,899	135,575	4,758	223,232
1943	61,944	133,451	4,913	200,308
1944	35,436	153,554	4,231	193,221
12 Month 8/31/45	48,576	158,228	4,396	211,200

* Denotes red figure.

The large decrease in earnings of Abington in recent years was due primarily to the lowered efficiency of its generating equipment and higher fuel cost. The record indicates that due to the anticipated abandonment of Abington's generating plant and purchase of its power requirements there will be a decrease in Abington's revenues and also a substantial reduction in power costs. The company has estimated that Abington's net operating income before Federal income taxes will rise to the level attained in the period 1936–1942.

The company has filed earnings estimates for the years 1945–1949 and for a typical year, on the basis of the present plant facilities, but taking into account the changes proposed in the operations of Abington. The figures for the typical year have been used by both the company and stockholder plans as a basis for projecting the proposed plans.

The following table shows gross revenues and net operating income of Republic's subsidiaries estimated by the company for the typical year on the basis set forth above:

TABLE VI

Gross Revenues of Subsidiaries	$962,000
Total Operating Expenses, Excluding Federal Income Taxes	719,000
Net Operating Income before Federal Income Taxes	$243,000
Federal Income Taxes	70,000
Net Operating Income of Subsidiaries	$173,000

In this forecast revenues of $250,000, $690,000, and $22,000 are estimated for Abington, the other six electric subsidiaries and the heating subsidiary, respectively.

The typical year gross revenues estimated at $250,000 for Abington compares with gross revenues per books of $335,091 and $341,475 for the calendar year 1944 and the twelve months ended August 31, 1945, respectively. However, it should be noted that the actual gross revenues for these periods includes approximately $90,000 of annual sales to a nonaffiliate which will be lost to Abington, as indicated herein.

The typical year gross revenues estimated for the other subsidiaries at $712,000 compares with gross revenues per books for these companies of $699,000 and $724,000 respectively

for the calendar year 1944 and for the twelve months ended August 31, 1945.

Typical year gross revenues estimated by Republic for all of its subsidiaries at $962,000 compares with $1,034,809 and $1,065,947 respectively received during the above periods. If sales to the nonaffiliate by Abington are deducted, the comparable amounts would be approximately $944,809 and $975,947 for the respective periods. For the typical year the company has estimated net operating income before Federal income taxes for Abington, the six other electric subsidiaries and the heating subsidiary at $89,000, $149,000, and $5,000, respectively, an aggregate of $243,000. These figures are only slightly higher than the level attained by the past steady growth and we find that they represent a reasonable estimate of the net operating income before Federal income taxes normally to be derived from the present plant investment.

Statutory Compliance

In order to approve either of the plans before us, we must find such plan necessary to effectuate the provisions of § 11 (b) and fair and equitable to the persons affected. The transactions proposed in the plan must also satisfy the other applicable standards of the act.

[1] An issue common to both plans has been raised by counsel for the indenture trustee. He urges that the bondholders be paid a redemption premium of 5 per cent of the original principal amount of the bonds. Neither plan proposes such payment. Republic's indenture provides that "The mortgagor shall have the right to call for payment or redemption any or all of the outstanding bonds issued hereunder or secured hereby on any interest date at 105 percentum of the principal amount thereof, together with accrued interest to said date. . . ." It is clear that this premium is only payable in the event of voluntary redemption by the company. Where the retirement of indebtedness occurs because of the compulsion of § 11, whether to meet a § 11 (b) order or in anticipation thereof, the retirement cannot be considered voluntary and the redemption premium is accordingly not payable as such.[7]

We find that retirement of Republic's bonds is required by § 11 (b) and our order thereunder,[8] and that the bondholders have no contract right to receive the redemption premium.

[2, 3] Both the stockholder plan in its proposed payment of the bonds and the company plan in its allocation of new common stock to the bondholders

[7] Re The United Light & P. Co. Holding Company Act Release No. 6603, April 30, 1946, and cases therein cited. We made a similar observation in our findings and opinion approving Republic's sale of its Virginia subsidiaries. See footnote 3, *supra*.

[8] In our findings and opinion ordering Republic to divest itself of the Virginia subsidiaries and to recapitalize, we pointed out that the extensive preferred stock dividend arrears, the extremely high proportion of debt to property and capitalization, the high proportion of the total of debt, preferred stock and preferred stock dividend arrears to property and capitalization, and the insufficiency of the system's earnings to support the capitalization, made it clear that Republic's corporate structure unfairly and inequitably distributed voting power among security holders in violation of § 11(b)(2) and that such inequitable distribution could be cured only by a readjustment of Republic's corporate structure, including debt. Re Republic Service Corp. (1943) 12 SEC 852, 48 PUR(NS) 149.

proceed on the theory that the bondholders are entitled to receive, in satisfaction of their claims, the unpaid principal amount of the bonds plus accrued interest. After consideration of all the available data in the record as to the asset and earnings coverage of the bonds, and all other factors bearing on their investment value, as referred to and summarized herein, including their early maturity, we are satisfied and we find that payment of Republic's bonds at principal amount plus accrued interest would constitute fair and equitable treatment for the bondholders.[9]

There has been no change in Republic's financial condition since our order of February 19, 1943 [cited below], to invalidate the provision thereof denying the present common stock any participation in the reorganization. And indeed, neither the proponents of the plans or other participants in the proceedings have urged otherwise. The company's past earnings have been inadequate to meet the dividend requirements of the preferred stock, and arrearages amounted to $1,296,599 as of August 31, 1945. Nor is there any indication that future earnings would be sufficient to pay off these arrearages and to satisfy the current preferred dividend requirement of $105,486 per annum. Accordingly, we believe that both plans properly deny participation to the common stock.

We now turn to a consideration of the capital structures proposed in the company and stockholder plans. As noted above, the company plan is based on the issuance of one class of stock and an allocation thereof between Republic's bondholders and preferred stockholders. The stockholder plan involves the issuance of new debt securities and new common stock, and provides for payment of the bonds in cash and distribution of the residual equity, represented by common stock and 30-day warrants to subscribe for common stock, to the preferred stockholders.

Isaac strongly opposes the company plan, chiefly because it entails a loss of value which might be available to the preferred stockholders if the bonds were paid in cash and new debt securities sold to obtain part of the funds required. The company, on the other hand, vigorously objects to the stockholder plan, principally on the grounds of the high initial debt ratio and the proposed retention of earnings to reduce debt in the future. Republic contends that the stockholder plan is unfair in that it compels the preferred stockholder to make a further investment in the company to protect his "asset position" and "share of the voting power," or else to dispose of a portion of his equity by the sale of warrants for whatever they may bring in the over-the-counter market during the 30-day period provided for their exercise. Republic also objects

[9] Cf. Re American Power & Light Co. (1945) Holding Company Act Release No. 6176, 61 PUR(NS) 129. The price range of Republic's bonds from 1935 through 1945 has been as follows:

	High	Low
1935	84¼	60
1936	96¼	88
1937	96	58
1938	71	53
1939	78¼	65
1940	76	60
1941	74	63
1942	62	45¼
1943	78¼	58
1944	95¼	79
1945	99	97¼

to the warrant proposal and to the underwriting by the Isaac group as permitting members of that group to obtain benefits at the expense of the less-informed remaining preferred stockholders.

Subject to our comments below, it would appear that a plan which would provide for a recapitalization of Republic with debt in a limited amount and common stock, and for payment of the present bondholders in cash, has substantial advantages over an all common stock plan in meeting the problems of the system. Although we think, therefore, that the principle underlying the stockholder plan affords the most appropriate method for Republic's recapitalization, we feel that the stockholder plan as presently constituted provides for an excessive amount of debt which could not be approved under the standards of § 7.

According to the estimate of earnings in the typical year discussed above, net operating income and gross income of the operating companies would amount to $173,000.[10] The company has forecast its own expenses and taxes at $29,000. Thus the consolidated net income accruing to the 114,590 shares of new common stock to be issued under the company plan would amount to $144,000. Under the company plan, the bondholders would receive new common stock with 84.66 per cent of such earnings applicable thereto, or approximately $122,000, and the preferred stockholders would receive stock representing 15.34 per cent of the earnings, or approximately $22,000.[11]

In the stockholder plan, which is based upon the company estimate of $173,000 gross income for the operating companies in a typical year, expenses and taxes of the parent company are figured at $21,000, resulting in an estimated $152,000 of consolidated gross income. Annual interest requirements on the debt securities proposed under the stockholder plan, computed at the rates of 4 per cent for the debentures and 2½ per cent for the notes, would amount to $54,500. The consolidated net income applicable to the 70,324 shares of new common stock to be issued is thus estimated at $97,500; one-half of such shares, proposed to be distributed to preferred stockholders, would have estimated applicable earnings of $48,750.

It is of course apparent that the earnings available to preferred stockholders under the company and the stockholder plans, $22,000 and $48,750, respectively, are not strictly comparable. The quality of the latter earnings is reduced by the leverage factor, and $13,000 thereof would be required for the proposed sinking fund. In addition, as noted hereinafter, we are unable to approve the amount of leverage involved in the stockholder plan. Taking all these considerations into account, we are

[10] As indicated in Appendix C [omitted herein], Republic's estimates of net operating income and gross income of subsidiaries are identical.

[11] The holder of a $400 bond would receive stock with total earnings, as estimated by the company, of $27.72 in lieu of all his present rights, including an interest claim of $20. The company estimated that dividends amounting to 90 cents per share could be paid on the new common stock, indicating a potential income of $19.80 on the 22 shares of new common stock to be distributed for each $400 bond.

We do not deem it necessary, in the light of our conclusions herein, to determine whether the proposed allocation to bondholders would give them the "equitable equivalent" of the rights they would be relinquishing.

nevertheless persuaded that the all common stock plan proposed by the company would involve a substantial sacrifice by the junior security holders.[12]

[4, 5] It is important to note the distinction between a holding company system such as that under consideration, where the subsidiaries have no publicly held debt or other securities outstanding, and a system where the subsidiaries themselves have complicated capital structures with large amounts of debt or preferred stock, or both, publicly held. The considerations which have led us to require an all common stock structure for the latter type of holding company[13] are not applicable here. Accordingly, we are of the opinion that a capital structure which retains some debt is permissible for Republic. And, under the circumstances of this case, we do not believe that an all common stock plan, which requires the junior interests to make a substantial sacrifice, can be regarded as fair and equitable to them when there is a feasible alternative method of recapitalization which, by retention of a certain amount of debt in the system, would provide for cash payment to the bondholders and would make available for the equity interests a more substantial share of the company's earnings.

While we find that retention of some debt in the Republic system is permissible, we cannot approve the large amount of debt provided for in the stockholder plan. Approval of any plan under § 11 requires a finding that the transactions proposed under the plan meet the standards of the other applicable sections of the act. We cannot find that the issue of debentures proposed under the stockholder plan would be reasonably adapted to Republic's security structure as required by § 7 (d) (1) of the act, 15 USCA § 79g (d) (1), or to its earning power as required by § 7 (d) (2).

As of August 31, 1945, the net property of Republic's subsidiaries amounted to $1,700,374 and the maximum cash available for capital expenditures under the stockholder plan to $329,754.[14] The proposed debt of $1,400,000 would be equivalent to 69 per cent of the total net assets of $2,030,128 and to 82.4 per cent of the net property. This would be a higher proportion of the net assets and net prop-

[12] In the text, we have compared the effects of the two plans on security holders, using as a basis of comparison the company's estimate of earnings in a typical year. Based on pro forma earnings for the twelve months ended August 31, 1945, earnings applicable to the new common stock to be allocated to preferred stockholders amount to $20,143 under the company plan and to $43,366 under the stockholder plan.

[13] *E.g.* Re Northern New England Co. (1941) 9 SEC 224; Re The Commonwealth & Southern Corp. (1942) 11 SEC 138, 44 PUR(NS) 217; aff'd. *sub. nom.* Commonwealth & Southern Corp. v. Securities and Exchange Commission (1943) 48 PUR(NS) 72, 134 F2d 747; Re Central & South West Utilities Co. (1942) 11 SEC 533; aff'd. *sub. nom.* Central & South West Utilities Co. v. Securities and Exchange Commission (1943) 78 US App DC 37, 50 PUR(NS) 293, 136 F2d 273. See, on the other hand, Re New England Power Asso. Holding Company Act Release Nos. 5839, June 1, 1945, and 6470, 63 PUR(NS) 1; Re New England Gas & E. Asso. Holding Company Act Release No. 6729, June 24, 1946, where we found it permissible under § 7 to have holding company debt securities.

[14] Broken down as follows:

Net current assets per books	$333,434
Additional cash per stockholder plan	13,820
	$347,254
Less: Estimated working capital ...	125,000
	$222,254
Add: Escrow fund	107,500
	$329,754

erty than we can permit under § 7 (d) (1). Although the plan provides for a 2 per cent sinking fund which would serve to reduce the high debt ratio and which could be increased to accelerate such reduction, the operation of such a provision would impose a heavy burden on Republic's income, would tend to develop pressure for taking up a maximum of dividends from subsidiaries, and might impair Republic's ability to pay dividends.

On the basis of the estimated $173,000 gross income for Republic's subsidiaries and the stockholder plan estimate of $21,000 for the holding company's expenses and taxes, the consolidated gross income of Republic and its subsidiaries would amount to $152,000. The estimated fixed charges of $54,500 plus sinking-fund requirements of $26,000, a total of $80,500, would amount to approximately 53 per cent of such consolidated gross income. The stockholder plan estimates that the total corporate income of Republic would amount to $140,000 or 80.9 per cent of the estimated gross income of the subsidiaries, and that Republic's corporate gross income, after estimated expenses and taxes of $21,000, would amount to $119,000. The estimated fixed charges and sinking-fund requirements would be equal to approximately 67.6 per cent of such corporate gross income. Further, the large amount of debt proposed in the stockholder plan might prevent Republic from developing its business except through retention of additional earnings. And unless Republic were to take up at least 60 per cent of the estimated gross income of its subsidiaries, its estimated expenses, fixed charges and sinking-fund requirements would exceed its total corporate income. These facts would require an adverse finding under § 7 (d) (2).

We feel that the issuance by Republic of debt securities in excess of $1,000,000 principal amount could not be approved under the standards of § 7 (d). A capital structure consisting of debt in the principal amount of $1,000,000 or less and common stock would involve an initial ratio of debt to net property of subsidiary companies of approximately 58 per cent or less as of August 31, 1945. Subject to appropriate provisions with respect to the price, interest rate, redemption provisions, sinking fund, and other terms of the issuance and sale of the new securities, it would appear that the requirement of § 7 of the act would then be met. Reduction of the amount of debt would increase the equity for the new common stock, and it would appear that, under present conditions, enough shares thereof could be sold to provide funds which, together with the proceeds of sale of the new debt securities, would be sufficient for payment of the presently outstanding bonds of Republic, and still leave a substantial proportion of the total issue for distribution to Republic's preferred stockholders. In order to avoid unfairness to preferred stockholders as a whole, the new shares to be sold should be first offered to them; and in order to ensure fair and equitable treatment of preferred stockholders not in a position to exercise their rights to purchase such shares, transferable warrants should be issued evidencing such rights. In addition, Republic should reserve the right to sell at public sale any of the shares with respect to which warrants

are unexercised, instead of being committed to sell them to a specific group of preferred stockholders at the warrant price. The new common stock should have preëmptive rights and cumulative voting.

The company plan provides for the reduction of the book amount of Republic's investments in its subsidiary companies from $3,105,264 to $2,190,000. This latter amount is $137,592 in excess of the underlying book amount ($2,052,408), as of August 31, 1945. The stockholder plan, however, proposes to state the investments of Republic at book amount ($3,105,264), which is $1,052,856 in excess of their underlying book value as of August 31, 1945, and to set up $1,089,300 in an account designated "Reserve for Adjustment of Assets Acquired in Reorganization." The stockholder plan states that the purpose of this account is to provide for any losses which may be inherent in the book amount of assets as of the date of reorganization but that it should not be construed as a measure of the amount by which the record cost of the assets of Republic exceeds the fair value thereof.

Neither the company plan nor the stockholder plan proposes that Republic's investments in subsidiaries be recorded in its accounts in a manner we deem wholly appropriate. The problem of the manner in which Republic's investments should be recorded has not been the subject of briefing or argument. It is our tentative conclusion, however, subject to such further data or argument as may be presented in connection with any amendments to the plans, that, under the particular circumstances of this case, the most appropriate method of recording Republic's investments in its subsidiaries would be to state them at the amount of their underlying net book assets as of the effective date of the reorganization.

Both plans have made provision for the election of a new board of directors and we feel that such a provision is required to effect a fair and equitable distribution of voting power under § 11(b)(2). Any amendment should contain appropriate provisions with respect to the election of the first board of directors of the recapitalized company calculated to give the holders of the new common stock an opportunity to elect a representative board.[15]

Status under § 11(b)(1)

[6] In our findings, opinion, and order of February 19, 1943, 12 SEC 852, 48 PUR(NS) 149, we ordered the divestment of the Virginia subsidiaries, which has since been accomplished, and reserved jurisdiction to consider whether all or any part of Republic's Pennsylvania utility properties constitute an integrated utility system or systems retainable under the standards of § 11 (b) (1) and whether the nonutility ice and heating businesses in Pennsylvania are retainable in connection with any such utility properties.

The electric subsidiaries of Republic are small in size and scattered, and all of them are located in Pennsylvania. We find that the continued combination of such systems under the control of Republic is not so large as to impair any advantages of localized man-

[15] See Re Jacksonville Gas Co. (1942) 11 SEC 449, 45 PUR(NS) 65, and Re International Utilities Corp. Holding Company Act Release No. 4896, Feb. 15, 1944.

agement, efficient operation, or the effectiveness of regulation. It appears therefore that the standards of clauses (B) and (C) of § 11 (b) (1) are met. The record indicates that none of the subsidiaries could be operated as independent systems without the loss of substantial economies, and we therefore find that the requirement of clause (A) of § 11 (b) (1) is satisfied. Accordingly, we shall take no action with respect to these companies under § 11 (b) (1) of the act.[16]

The record fails to support the retainability of the ice business in connection with the utility business of Republic; and we so find. Both of the plans provide for the disposition of such business by sale, recognizing its nonretainability. We shall order that Republic divest itself of its interests in the Susquehanna Ice Company and the Lehigh Ice Company.

Renovo Heating conducts its business jointly with that of Renovo Edison. Renovo Heating uses the exhaust steam generated by Renovo Edison in its electric operations, and is operated by personnel of the electric company. The evidence further indicates that the company has had under consideration the installation of a condensing unit in Renovo Edison. Should this occur the heating business would have to be discontinued or Renovo Heating would have to build its own facilities for the production of steam. Under the circumstances, we shall continue our reservation of jurisdiction as to the retainability of the heating business in connection with the utility operations of the Republic system.

Conclusions

For the reasons set forth herein and under all the circumstances of this case, we cannot find that the plan proposed by the company is fair and equitable to the persons affected thereby, nor can we approve the stockholder plan as presently constituted.

At the present time, however, we shall enter no order with respect to these plans. An amendment could be filed either by the company under § 11 (e) or by any other interested person under § 11(d) in accordance with our suggestions heretofore set out. We shall accordingly grant the company and Isaac a period of thirty days from the date hereof (or such additional time as may be applied for upon a proper showing) to file amendments not inconsistent with these findings and opinion. If, within such time, no such amendments are filed, we shall enter an order disapproving the plans and take such action as we may deem appropriate, which may include action under § 11 (d) on our own motion. At the time we enter a final order on these plans our order will release jurisdiction heretofore reserved under § 11 (b) (1) with respect to Republic's Pennsylvania electric subsidiaries, direct that Republic divest itself of its interests in Susquehanna Ice Company and Lehigh Ice Company, and

[16] Our conclusion that the properties are retainable under § 11 does not constitute nor should it be construed as an indication that we believe they should necessarily be retained in one holding company system. It was testified that certain of the properties should as a matter of business judgment be disposed of, if sales could be effected at reasonable prices. The stockholder plan provides that such sales are contemplated as a method of reducing the debt securities initially proposed by be issued.

continue the reservation of jurisdiction with respect to the retainability of Renovo Heating in the Republic system.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Rochester Gas & Electric Corporation

v.

Milo R. Maltbie et al.

— App Div —, 63 NYS2d 771
June 26, 1946

REVIEW *of Commission order directing electric company to write off certain asset accounts to surplus; order annulled and set aside without prejudice. For Commission decision, see (1943) 52 PUR(NS) 321.*

Accounting, § 56 — Revision — Book cost and original cost — Water rights.

An order directing a power company to write off from its books and charge to earned surplus the difference between original cost of water rights and the amount allocated to such rights under Commission direction at an earlier date should be set aside where the entries have stood for a long period of years, the water rights were acquired in a consolidation prior to Commission regulation, and the Commission has ignored their value at date of acquisition and any advance over original cost which the company paid for them.

Consolidation, merger, and sale, § 1 — Absence of collusive dealings — Arm's-length bargaining.

Discussion of the formation of a new corporation, and its acquisition of properties, brought about in a lawful manner in a consolidation where there is no evidence of affiliation, interlocking directorship, or common ownership, p. 116.

Accounting, § 32 — Properties acquired in consolidation.

Discussion of accounting for properties acquired in a consolidation brought about in a lawful manner where there is an absence of evidence of padding of accounts by constituent companies or writing up of assets for the purpose of inflating the capitalization of the new company, p. 116.

Accounting, § 1.1 — Confiscatory requirements — Values over original cost.

Discussion of constitutional limitations on the power to direct the write-off of values over and above original cost of water rights, p. 117.

ROCHESTER GAS & ELEC. CORP. v. MALTBIE

Accounting, § 32 — Original cost of water rights — Prior devotion to public service.

Discussion of the application of the doctrine of original cost in the case of water rights which have, to some extent, been used in the public service, where prior owners had only partially or incompletely utilized them in the public service, p. 117.

(HILL, PJ., concurs in separate opinion; FOSTER and HEFFERNAN, JJ., dissent.)

Before Hill, P. J., and Heffernan, Brewster, Foster, and Lawrence, JJ.

APPEARANCES: Nixon, Hargrave, Middleton & Devans, of Rochester (T. Carl Nixon and Earl L. Dey, both of Rochester, and Edmund B. Naylon and George Foster, Jr., both of New York city, of counsel), for petitioner; Philip Halpern, of Albany, Counsel to Public Service Commission, (George H. Kenny, of Albany, of counsel), for respondents.

BREWSTER, J.: Petitioner has instituted this proceeding pursuant to Art. 78 of the Civil Practice Act to review an order made by respondents, the Public Service Commission of the state of New York on October 21, 1943, 52 PUR(NS) 321, which directs petitioner to write off from its books, records, and accounts, as of December 31, 1940, certain asset accounts in the aggregate amount of $5,282,544.39 and to charge it to its earned surplus.

A summary of the history of petitioner as to its formation and original acquisition of property, its original capitalization and ownership and the effects upon its capital accounts which resulted by virtue of subsequent legislation, all of which seems relevant to an understanding of the grounds upon which the order in question was made, as well as of petitioner's opposition thereto, is as follows:

Petitioner, as a body corporate, came into existence on June 11, 1904, by the consolidation of two former corporations—Rochester Light & Power Company and Rochester Gas & Electric Company. This was effected in accordance with Chap. 566 of the Laws of 1890, the Transportation Corporations Law, which authorized two or more gas or electric corporations to consolidate into a single entity by complying with the provisions of the Business Corporations Law as regards the consolidation of business corporations. Petitioner was thus organized under the name of Rochester Railway and Light Company—later and in 1919 changed to petitioner's present name. At the time of the consolidation Rochester Gas & Electric Company owned practically all of the water rights and most of the other property first acquired by petitioner, and its owners received therefor secondary mortgage bonds of the new company; and the owners of the other constituent, Rochester Light & Power Company, received for what it transferred and paid in cash to the new company, only the latter's issue of its common voting stock. The consolidation agreement which gave rise to petitioner's formation appraised the total value of all the property, franchises and rights which it thus acquired, at $14,169,167.62, which was the amount it set up as its book cost

thereof, and the distribution of its payment may be illustrated as follows:

(a) To the Owners of Rochester Gas & Electric Company	
by issuance of bonds	$5,178,840.00
by liabilities assumed	6,733,399.31
	$11,912,239.31
(b) To the owners of Rochester Light & Power Company 70% of $4,000,000 common stock less $275,000 cash (additional consideration for said stock)	2,525,000.00
Total	$14,437,239.31
Less assets other than Plant and Equipment ...	268,071.69
Net cost (in securities and obligations) of Plant and Investment to Petitioner	$14,169,167.62

After the enactment of the Public Service Commissions Law, Laws 1907, Chap. 429, and on October 21, 1908, there was duly promulgated a "Uniform System of Accounts." This required public utilities such as petitioner, to set up their books so as to show the actual cost of property used in the public service, and which eventually was to be shown in various subaccounts as therein provided. Thereafter, as time and occasion afforded, the fixed capital of utilities acquired prior to 1908 was analyzed and examined by the Public Service Commission and the actual cost of its properties was distributed to various subaccounts. This treatment of petitioner's capital account came about in 1918 and 1919. Up to that time its original capitalization had remained in sum total. But as a result of proceedings just referred to, $4,600,000 of its capital was allocated to its water rights, $2,054,653.18 to another prescribed account then known as "Other Intangible Capital," and the remainder to other asset accounts not here material. These allocations were carried into a "Final Corrected Balance Sheet as of December 31, 1918, Showing Proposed Adjustment of Reported Balances as at That Date." On July 29, 1919, the Public Service Commission made an order directing entries to be made accordingly, and with which petitioner complied. From that date until the order in question the aforesaid setups and entries as to petitioner's capital accounts remained unquestioned on petitioner's books, during which time the Commission conducted various examinations of its accounts and records; financial statements were made and circulated, and securities sold with the Commission's approval, with the one exception that in 1938, in connection with the pendency of a rate case, petitioner and the Public Service Commission appear to have arranged in its settlement that the aforesaid item in petitioner's capital account assigned to "Other Intangible Capital" was to be written off at the annual rate of $200,000, and which arrangement has been carried out so that as of December 31, 1944, the original amount had been reduced to $650,373.18, and, as of the date of entries directed by the order under review, December 31, 1940, it had been reduced to $1,450,373.18. In 1937 the Commission promulgated a new "Uniform System of Accounts" effective January 1, 1938. Among other things this system provided, as to the cost of properties of electric utilities, that an asset account known as "Account No. 101—Electric Plant in Service," should show only the "original cost" thereof, which was defined as being the cost of the property

to whatever owner had first devoted it to the public service; and that in another account known as "Account No. 105—Electric Plant Acquisition Adjustments" there should be entered the difference, if any, between such "original cost" and its cost to the accounting owner. Prior to this and on October 20, 1936, the Commission had issued an order in Case No. 8970 commonly known and referred to as the "Continuing Property Records" order and which required public utilities to make and keep continuing property records of all their property so as to show the "original cost" thereof. After the effective date of said orders of 1936 and 1937, petitioner engaged itself in compliance with them.

The order before us was made in the course of a proceeding which respondents instituted on their own motion on June 30, 1938, as Case No. 9552, under a twofold power (a) to investigate and correct entries on petitioner's books and records, and (b) to determine the original cost of its property. Public Service Law, § 66, subd. 9, and § 114. The hearings held therein early shaped and continued themselves so that the investigation was directed pretty much wholly to the ascertainment of the aggregate "original cost" of petitioner's water rights in and to the Genesee river, viz: the cost to the former owners of them who had first employed them in the public service. The proceeding took such a course that the Commission separated the hearings as to this matter from the over-all reclassification of petitioner's properties and confined the issue to that subject of such "original cost."

While as aforestated the petitioner has owned these water rights since June 11, 1904, the ascertainment of their "original cost" carried the inquiry back over many years and as far as the year 1885 when, in that and the following year, some of petitioner's predecessors had purchased such of them as embraced rights to over one-half of the potential water power to which all of the rights in question relate. In the proceeding such original cost of petitioner's water rights was found to be $632,132.21, exclusive of an item of $135,696.58 which is not in dispute and was the cost of petitioner's acquisition of a certain minor part of its water rights after its formation.

The order in question, made in the course of the proceeding lastly referred to, but not in culmination thereof, for it still continues, was made upon the ground that, with the exception just noted, such ascertained "original cost" called for a write-off in its capital accounts, the computation of which is illustrated as follows:

Petitioner's book cost of Water Rights acquired in 1904		$4,464,303.42
Petitioner's book cost of Water Rights acquired subsequent to 1904		135,696.58
Petitioner's book cost of Intangible Capital acquired in 1904		2,054,653.18
Total		$6,654,653.18
Less amounts amortized in connection with rate case settlement		604,280.00
Balance of cost on Petitioner's books December 31, 1940		$6,050,373.18
Less determined "Original Cost" of water rights ordered to be placed in Account #101, viz:		
	632,132.21	
	135,696.58	767,828.79
Ordered charged to Surplus		$5,282,544.39

It is the petitioner's claim that something over $3,000,000, should have

been retained in Account No. 101 as representing the true "original cost" of the water rights, and that the balance of their actual cost to petitioner should be retained in Account No. 105.

For aught that appears in the record before us petitioner's formation and original acquisition of its properties were all brought about in a lawful manner, and upon its culmination the erstwhile companies which had agreed to the consolidation ceased to exist. Electric Bond & Share Co. v. State (1937) 249 App Div 371, 293 NY Supp 175. Likewise the evidence is that when the consolidation was effected neither of the constituent companies were in any wise affiliated, nor did they have any interlocking directorship or common ownership. There is no evidence that prior to the agreement of consolidation either of the constituent companies had padded their accounts or written-up their assets for the purpose of inflating the capitalization of the new company. The evidence is undisputed that upon the latter's formation the owners of the larger constituent parted all company with any stock holding ownership therein, but took in exchange for what it had contributed, a series of mortgage bonds upon the entire property and assets of the new concern, secondary however to its erstwhile issuance of bonds and its other indebtedness, all of which were assumed by the new company. The owners of the other constituent, in consideration of what it gave into the consolidation, received the entire stock ownership, and in addition to the properties, rights, and franchises which it made over to the new company its owners also contributed $275,000 in cash and subjected themselves to a further cash assessment on its stock of some $1,200,000 which was subsequently paid, all of which, of course, went to the security of the bonds received by the owners of the Rochester Gas & Electric Company. To uphold the order in question respondents argue that the price which petitioner thus paid for the property it so acquired, and as reflected in its capitalization, did not stem from arm's-length bargaining but was akin to the capitalization of intercorporate profits or other collusive dealings whereby unreal, untrue, and fictitious values went into an inflated capital structure. But respondent conducted no hearing and considered no proofs as to this other than the fact of the method whereby the petitioner acquired its property in 1904, and, as to the water rights, capitalized them at a price paid for them which was far in excess of what it found had been the aggregate of their "original cost." Whether in fact the price paid and capitalized was in line with fair and sound values was neither further considered nor explored. The very method of acquisition and resultant capitalization seems to have been the ground for its condemnation. The respondents' reaction to such methods appears to have been that "No good thing could come from Nazareth"—i.e., a consolidation. Such may arise from a zeal for the protection of the public interest occasioned by the increase in governmental control which began in 1907. Ways and means of public utility financing and accounting, current and lawful prior to that year, when compared to what is now required, may, by the very methods formerly sanctioned presently appear in

some quarters to cast over them a cloud of unwholesomeness as regards the public interest. But we must keep in mind that the protection or furtherance of the public interest has its constitutional limitations. New York Edison Co. v. Maltbie (1935) 244 App Div 685, 9 PUR(NS) 155, 281 NY Supp 223, affirmed (1936) 271 NY 103, 15 PUR(NS) 143, 2 NE2d 277; People ex rel. Iroquois Gas Corp. v. Public Service Commission (1934) 264 NY 17, 2 PUR(NS) 448, 189 NE 764. When in 1933 the Commission defined and prescribed accounting methods relating to the concept of "original cost" it then required that any advance thereof in purchase price was to be cast into a "Suspense to be Amortized" account, and there made subject to be written off from capital as the Commission might later prescribe. Such was held to be unauthorized and confiscatory. New York Edison Co. v. Maltbie, *supra*. In the instant case the write-off is more direct and pointed in confiscation if in fact the water rights in 1904 had sound values over and above their determined aggregate "original cost."

A unique feature of the water rights which existed when petitioner acquired them some forty-two years ago points a somewhat novel question as regards the application of the doctrine of their "original cost." This consists in the fact that when petitioner acquired them they had to some extent been used in the public service, and their prior ownership extended to all and everything which had been or in the future might be accomplished in their exercise and enjoyment, yet, prior to 1904, the early owners of those rights, quite considerable in number and ownership, had only partially or incompletely utilized them in the public service. This is shown by evidence that when petitioner acquired them their exercise was only to the extent of their firm power and a 18,475 horsepower development, whereas petitioner was successful in harnessing them to the extent of 54,506 horsepower and employed their secondary powers. It is respondents' view and determination that notwithstanding this, these water rights may now go into petitioner's capital account only at the figure of their cost to the first owners who to any extent used them in the public service, even though such cost is related back to the time of the early beginnings of the development of the generation of hydroelectrical energy and its transmission and distribution in the business of public service. In this respondents rely upon the evidence that the use made of such rights prior to 1904 was at times as full and extensive as was possible with the then artificial means employed and the quantity of falling water permitted. That is, in times of extreme low water the means installed utilized all the water there was. So, they claim, such use stamped the original cost to the early owners as being the full amount which may now go into petitioner's capital structure on account of them. No valuation of the water rights, as such may have existed when petitioner acquired them, has been made. In fact, it has been ruled out, and the price which in effect petitioner paid for them over their original cost has been stricken from its capital accounts because the method of acquisition was by the consolidation aforesaid.

It may not be gainsaid that when

petitioner acquired its water rights, they included attributes which were separable in the concept of property, and as such had never been devoted to the public service, viz: the rights to the use of the water of the river in various stages of greater flow and volume. These constituted property which was separable and alienable as regards that which had been devoted to the public service. They were not coefficients of what had been so devoted and so, separately considered, they had values which may have been capable of due appraisal. At least we may not say here and now to the contrary. We may not even say such values did not exist independent of a consideration of their use in the public service. But in this review we are not concerned with what rules and techniques are applicable to the problem of valuation. Rather, the fundamental question is whether that problem must be solved before a write-off from capital is authorized.

Respondents' thesis which culminated in the order under review thus ignores the following matters: (1) any value which was inherent in the water rights acquired as regards their parts or elements which had never been employed in the public service prior to petitioner's acquisition, (2) any increment of value which pertained to them by virtue of a single ownership and control. The value of all of the rights in question in one ownership, it may be, exceeded the aggregate value of their separate parts in multiple ownerships, (3) the advance over their original cost which petitioner paid for them in 1904. While this amount was not originally separately stated—such not being then required—still it was necessarily included in the appraisal made by the consolidation agreement for the purpose of the new company's capitalization. And this was done pursuant to then existing law. Business Corporations Law, Laws 1890, Chap 567, § 14, re-numbered § 9 by Laws 1892, Chap 691. And, the amount was later ascertained and allocated by the Commission's direction in 1919. (4) Also ignored is the fact that under the evidence presented the situation and relations of the companies which consolidated was such as in the nature of things to have called for arm's-length bargaining to hold down the determined capitalization, because, as aforestated, the owners of one company received only mortgage bonds and the owners of the other all the common stock issued which represented only the resultant equity in the properties so transferred. Respondents' argument that there was collu sion is without supporting evidence.

It is my opinion that because of the avoidance of these matters the order under review may not be upheld. Even though it should eventually be decided that the early and incomplete devotion of the water rights to the public service stamps their "original cost" as the only amount at which they may be carried in present Account No. 101, still when petitioner acquired them such ascertainable values as were inherent in their unutilized and undeveloped potentialities and in their amalgamation in single ownership were factors legitimately employable in any bona fide, arm's-length, fair bargaining as between seller and buyer, and clearly any fair price paid because of the working of such factors would be an item of cost lawfully cast

into Account No. 105 under the existing system.

I cannot subscribe to the proposition that the mere fact that petitioner acquired this property as a result of the consolidation is any evidence, much less conclusive evidence, that fair bargaining did not take place or that values were not properly measured in terms of price and legitimately capitalized. In the adjudications in the cases upon which respondents rely as authority for striking down the instant capitalization there were instances of merger or consolidation wherein the evidence disclosed inflationary practices as to which the record before us is barren of evidence.

As to the part of the order which directs the write-off of the remainder of the account pertaining to intangible capital, for the reasons aforestated, viz: failure of hearing and consideration of evidence as to values, it should also fall. Moreover, the order's direction to accelerate the 1938 arrangement for the amortization of that account has no evidence to support it.

The order under review should be vacated, and annulled, and since the proceeding pends wherein it was made, there is no occasion to remit but the annulment should be without prejudice to a continuance of such further proceedings under respondents' order of June 30, 1938, as are not inconsistent with this opinion.

Determinations and order of October 21, 1943, 52 PUR(NS) 321, annulled, vacated, and set aside, on the law and facts, with $50 costs and disbursements, without prejudice to the continuance of other proceedings under respondents' order of June 30, 1938, in case No. 9552 not inconsistent with the opinion.

Lawrence, J., concurs.

Hill, PJ., concurs in a separate memorandum.

Foster, J., dissents in a memorandum in which Heffernan, J., concurs.

FOSTER, J., dissenting: I am unable to agree with the proposed decision that the determination of the Public Service Commission in this proceeding should be annulled. The consolidated company received property which cost the constituent companies about $8,200,000 and issued therefor securities of approximately $14,200,000. The paper profits from this write-up were divided between the participants in the transaction. By a mere change in corporate entities through a consolidation the value of property devoted to a public use was increased in substantially the amount indicated. The transaction itself, and the dominant position of the Rochester Gas & Electric Company, indicates that there was no bargaining at arm's length.

I vote to affirm.

HILL, P.J. concurring: The 1904 consolidation should not be classified as a transaction entered into at arm's length. It seems that "promoters" conceived the plan of consolidation and, generally speaking, the new corporation assumed obligations and gave to the former owners of the property, of which the water power was a part, bonds of the consolidated company which were junior to those already outstanding issued by one of

the constituent corporations. The rest of the property after consolidation was represented by stock. New money of a comparatively small amount was paid into the consolidated treasury. The item of more than $2,000,000, designated "other intangible capital" is being reduced $200,000 a year by agreement between the Commission and the company. For nearly forty years, since the creation of the Public Service Commission, the books have not been attacked in other respects. There have been examinations and orders in other proceedings during that period. When the "intangible" item in the capital account is written off by instalments, or sooner if the Commission should now direct, the books of account of petitioner should not be required to show a loss when none has been suffered. This principle has been reiterated not infrequently by the courts of this state. New York Edison Co. v. Maltbie (1935) 244 App Div 685, 9 PUR (NS) 155, 281 NY Supp 223, affirmed (1936) 271 NY 103, 15 PUR (NS) 143, 2 NE2d 277; People ex rel. Iroquois Gas Corp. v. Public Service Commission (1934) 264 NY 17, 2 PUR(NS) 448, 189 NE 764. The latter case reversed the Appellate Division decision made by a divided court, 238 App Div 184, PUR1933D 282, 264 NY Supp 550. The Commission should give consideration to the value of the assets as compared with the book entries, and not destroy the surplus account because of a theory of bookkeeping, particularly where tacit approval has been given for more than a quarter of a century.

MISSOURI PUBLIC SERVICE COMMISSION

J. E. Latimer

v.

Southwestern Bell Telephone Company

Case No. 10,810
August 2, 1946

COMPLAINT *by subscriber against telephone company's refusal to continue direct line service on change of address; dismissed.*

Service, § 32.1 — Power of Commission — Filed rules and regulations — Telephone service.

1. The Commission does not have power to require a telephone company to furnish service to a customer other than in conformance with the rates, rules, and regulations filed with the Commission, p. 122.

LATIMER v. SOUTHWESTERN BELL TELEPH. CO.

Service, § 452 — Telephones — Inadequate 4-party line service — Government regulations — Insufficient equipment.

2. Evidence offered by a telephone subscriber showing the inadequacy of his 4-party line service is not sufficient to cause the issuance of an order upgrading his service where government regulations and insufficiency of equipment permit no higher grade of service and the inadequacy is due to the carelessness of other patrons, p. 122.

Service, § 464 — Telephones — New subscribers — Government priority schedules.

3. A telephone company, in following a government order setting up a preference sequence to be followed in establishing service to any and all of its customers or prospective customers, is acting in a proper manner, p. 124.

Discrimination, § 229 — Telephone service — Government priority schedule.

4. No discrimination exists against a prospective telephone subscriber where the company, in considering his application, acts in conformity with government priority regulations, p. 124.

Service, § 452 — Telephones — Outages on party lines — Duty to instruct.

Statement that a telephone company has a duty so to instruct 4-party line patrons that outages resulting from negligence, carelessness, or wilfulness do not occur, p. 124.

Service, § 452 — Telephones — Company efforts to remove causes of outages — Commission position.

Statement that Commission would be sympathetic to a telephone company in its effort to remove causes of outages on party lines even to the extent of denying service to patrons who are repeatedly at fault, p. 124.

By the COMMISSION: This case is before the Commission upon the complaint of J. E. Latimer, whose residence is in Jackson county, Missouri, against the Southwestern Bell Telephone Company, because of his being unable to secure, from the Southwestern Bell Telephone Company, direct line telephone service for his residence recently purchased in the aforesaid county.

Upon receipt of the complaint, notice was given to the Southwestern Bell Telephone Company that such complaint had been filed, and the company was directed to satisfy the complainant or answer said complaint. In due time, the defendant's answer was received. On serving a copy of the said answer on the complainant, the Commission was informed that the answer was not satisfactory to said complainant. Therefore, the case was set for hearing and heard May 21, 1946, and submitted upon the record then made. Due notice had been given to both the complainant and the defendant.

The evidence shows that the complainant is a resident of Jackson county, Missouri. Up until December 1, 1945, he had his residence at 3105 Harris road in that part of the unincorporated area between the corporate limits of Independence, Missouri and Kansas City, Missouri. He received telephone service from the Southwestern Bell Telephone Company, the defendant, through its Independence exchange. He is engaged

in the automobile business in Independence and has been a subscriber of the defendant's telephone service at his business address, receiving business telephone service, and residence telephone service at his residence until December 1, 1945. He sold his home at 3105 Harris road and gave possession December 1, 1945. He then purchased another home located near by, at Sheley road and Blue Ridge, being some nine-tenths mile by highway from his former home.

Sometime in September of 1945, the complainant discussed with the local representative of the defendant, a Mr. Stapleton, the matter of giving up telephone service at his former residence, and securing telephone service at the new home. The complainant was very desirous of receiving direct line telephone service as he had in his former home. From the record, there appears to have been considerable conversation concerning how the matter should be handled, and it appears that the representative of the defendant advised the complainant that he should continue his residence telephone service at his former residence, classifying it as a vacation rate service, in order that the complainant might be held as a subscriber of the defendant company, and in that way have prior claims at his new residence over applicants for service who were not customers of the defendant and over those customers who had discontinued their service and then requested that they receive it at a new location. It appears that there is no dispute of the fact that Mr. Stapleton informed the complainant that if he did not continue as a vacation rate subscriber, he would then cease being a subscriber of the defendant and upon moving to a new location, he would be classified as a new subscriber and would take his place at the bottom of the list of the many prospective patrons who have for many months, and are, seeking residential telephone service from the defendant.

It is very evident that the defendant is very short of facilities in this exchange area to furnish service to new subscribers, and finds itself in the same position as exists throughout the state and as it is shown exists in the whole Kansas City exchange area. It was pointed out that the defendant has three different cables extending toward the area in which the complainant has been residing and will reside. These cables were installed a number of years ago according to the defendant's plans and layouts to service certain sections.

The complainant desires direct line telephone service to his residence. The defendant is offering only 4-party line service to new subscribers and to subscribers moving into this area. It claims it has no facilities for establishing direct line service to any new subscriber in this area. It admits it has a few pairs in the three cables referred to by the defendant extending into this area, but those pairs must necessarily be held in reserve for emergency use and cannot be used for regular service. Should they be used for regular service, then if an outage to one of its present subscribers or other emergency occurred, the subscribers whose service is affected could not be served in accordance with its plan of operating the system.

[1, 2] The defendant takes the position that it has offered service in

conformance with its tariffs, rules, and regulations filed with the Commission. No effort was made to disprove that position. It might furthermore be added that this Commission does not have the power to require the defendant to furnish service to any customers other than that in conformance with the rates, rules, and regulations filed with the Commission. (State ex rel. St. Louis County Gas Co. v. Public Service Commission, 315 Mo 312, PUR1927A 187, 286 SW 84.) The defendant also points out that it is required to furnish service under the provisions of an order issued by the War Production Board on September 27, 1945, under the title of Amended Order U-2. That order provides the preference sequence that is to be followed by the defendant in establishing service to any and all of its customers or prospective customers. It is further pointed out that the Civilian Production Administration, by Executive Order No. 9638 on November 3, 1945, assumed the obligations and authority of the War Production Board and that no amendment to the order of September 27th has been made by that Administration. The defendant contends that the complainant has held the highest position in the order of priority by which he can secure telephone service by continuing as a vacation rate customer, and that in so doing he has been placed in what is designated in Order U-2 as Category No. 6. That is the highest preference that the complainant can ask under that order. If the complainant had not continued as a vacation rate customer and had moved to the new location, he would have discontinued service under the rules and regulations and under Order No. U-2, and would have been placed in Category 9 of Order U-2. The sequence of installing residence telephone service as provided for in Order U-2 in general is about as follows:

Category 5 is the first category for rendering service. That provides that service shall be installed for customers according to Schedule B, which is service to those having serious illness or physical disability.

Category 6 provides: "Changes of address of residence main service within the same exchange or to another exchange of the same operator within the same metropolitan area or within such other area as is defined by the operator's established practices."

Category 7 applies to service essential to military production, reconversion, or employment.

Category 8 applies to new residence service to veterans and servicemen's families.

Category 9 provides: "New residence main service other than that included in the above categories."

We note that U-2 as issued and now in force by the Civilian Production Administration, provides for the following penalty for violation of its terms:

"(e) Violations. Any person who wilfully violates any provision of the order or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of,

or from processing or using, material under priority assistance."

The complainant states that by having to take telephone service as one of a 4-party line circuit, he receives unsatisfactory service and that the line over which the service is offered to him has been out of service twice since the service was established. The defendant states that the cause of the outage of his telephone service was that one of the patrons on the line had left the receiver off the hook twice, thereby putting the circuit out of service. It is unfortunate, of course, that patrons served by 4-party lines are so careless as to interrupt service by that process, and it is the duty of the defendant so to instruct the patrons to see that such outrages do not occur by negligence, carelessness, or by wilfulness. If such patrons on such lines do not take care of such causes the service should be denied them, and the Commission would be sympathetic with the defendant in its effort to remove such causes even to the extent of denying service to patrons who allow such instances to occur repeatedly.

[3, 4] The complainant points out he is a substantial user of the telephone service furnished by the defendant, making substantial use of his residence telephone in connection with the operation of his business, and, beyond doubt, the defendant company would make every effort to prefer establishing service to such patrons if it were permitted to discriminate in their favor. The complainant takes the position that the defendant is discriminating against him, but the record in the case fails to reveal any discrimination against him, ether in attempting to establish service or in the kind of service it makes available to him. He is a substantal businessman of the community, but the rules provided for under the Civilian Production Administration Order U-2 must be followed, and also the tarriffs filed with the Commission must be followed by the defendant as well as the Commission and the customers using the service, so we fail to find that the defendant is in any way denying the complainant service under any conditions by which the service should be furnished.

The defendant has shown the number of patrons it is now furnishing 4-party residence service to through the Independence exchange is 4,201 patrons, whereas in 1940, it was furnishing similar service to only 537 patrons, an increase of 682.3 per cent. On March 25, 1946, the defendant had "held orders" in its Independence-Kansas City exchange area for 19,386 telephones; that is, requests from people who have no telephone service at all, and they had requests for upgrading, that is, from 4-party to 2-party and 1-party service, from some 11,490 residential customers. On April 25, 1946, they had "held orders" from 21,002 customers who had requests for telephones and who had no service whatever. The defendant further states that in the Independence exchange area alone, there are 1,841 who have no telephone service at all, who have requested installation of a telephone and furthermore that there are 1,050 people who have requested an upgrading of service they now have. It is also shown that 1,455 requests for service in Independence have been filed with the defendant later than January 1, 1946.

The defendant showed other statis-

tical information as to the inadequacy of this system to furnish service to the public at this time, and maintains it will not be in a position to meet the serious needs until it is able to lay out, install, and put in operation facilities that cannot now be secured. The shortage is shown to exist throughout the entire system, from customers' instruments, through outside plant, such as wires, cables, etc., to switchboard jacks and the ability of the operators to furnish service through switchboards that were designed to operate by giving service to one customer through each jack instead of arranging to serve four customers through each jack.

From all the evidence that has been submitted to the Commission, the Commission fails to find that the defendant is discriminating against the complainant and we fail to find how the defendant can be required to offer direct line service under the present conditions and restrictions both Federal and through tariffs filed with the Commission. The Commission finds that this case should be dismissed.

It is, therefore,

Ordered: 1. That the complaint herein made and fully heard be and is hereby dismissed.

Ordered: 2. That this order shall take effect on this date and that the secretary of this Commission shall forthwith serve on all parties interested herein a certified copy of this report and order.

Williams, Henson, McClintock, Commissioners, concur; Osburn, Chairman, and Wilson, Commissioner, concur in result only.

PENNSYLVANIA SUPREME COURT

Pennsylvania Electric Company

v.

Charles M. Morrison, Secretary of the Commonwealth, et al.

— Pa —, 47 A2d 810
June 25, 1946

APPEAL *from decree of court of common pleas dismissing suit to enjoin secretary of commonwealth and department of state from issuing certificate of incorporation for a proposed electric coöperative in the absence of a certificate of public convenience; affirmed.*

Mutual companies, § 2 — Jurisdiction of Commission — Electric coöperatives.

1. Electric coöperatives, under the Electric Coöperative Corporation Act, are exempt from the jurisdiction and control of the Public Utility Commission, p. 126.

Certificates of convenience and necessity, § 53 — When required — Incorporation of coöperative.

2. The incorporators of a proposed electric coöperative corporation, under the Electric Coöperative Corporation Act, need not obtain and file with the secretary of the commonwealth a certificate of public convenience from the Public Utility Commission as a prerequisite to the issuance of a certificate of incorporation, p. 126.

Public utilities, § 58 — What constitutes — Coöperatives.

3. An electric coöperative, under the Electric Coöperative Corporation Act, even though similar to a public utility, is not a public utility within the meaning of the Public Utility Law, p. 126.

Before Maxey, C.J., and Drew, Linn, Stern, Patterson, Stearne, and Jones, JJ.

APPEARANCES: Frank B. Quinn, of Erie, John H. Fertig, of Harrisburg, and English, Quinn, Leemhuis, & Plate, of Erie, for appellant; William M. Rutter, Deputy Attorney General, and James H. Duff, Attorney General, for appellees; Weiss & Rhoads, of Harrisburg, Peelor & Feit, of Indiana, and Paul H. Rhoads, of Harrisburg, for intervenors.

JONES, J.:

[1–3] The question which the appellant raises is whether the incorporators of a proposed electric coöperative corporation must obtain and file with the secretary of the commonwealth a certificate of public convenience from the Public Utility Commission as a prerequisite to the issuance of a certificate of incorporation. The answer depends upon the interpretation to be given §§ 32 and 38 of the Electric Coöperative Corporation Act of June 21, 1937, P.L. 1969, 14 PS §§ 282, 288, in conjunction with the limitation of the term "public utility" as defined by paragraph (17) (g) of § 2 of the Public Utility Law of May 28, 1937, P.L. 1053, 66 PS § 1102(17)(g).

The intervening individual defendants, as the incorporators, filed with the secretary of the commonwealth articles of incorporation under the Act of June 21, 1937, cit. *supra,* for the incorporation of an electric coöperative to be known as Allegheny Electric Coöperative, Inc. The purpose of the proposed coöperative was "to engage in rural electrification on a nonprofit basis" by following certain statutorily prescribed methods which the articles set forth. The plaintiff, a Pennsylvania public utility corporation, protested the incorporation, asserting that the proposed coöperative was a public utility and that a certificate of public convenience, as required by the Public Utility Law, cit. *supra,* was therefore necessary as a prerequisite to the incorporation. The secretary of the commonwealth overruled the protest and gave notice to the plaintiff that the certificate of incorporation would be issued within ten days. The plaintiff thereupon filed the bill, here involved, seeking to enjoin the secretary of the commonwealth and the department of state from issuing the certificate in the absence of a certificate of public convenience. The defendants filed an answer raising preliminary objections to the bill as did also the in-

corporators who were permitted to intervene. The learned court below disposed of the matter on the bill and answers and entered a final decree dismissing the bill from which the plaintiff took this appeal.

Section 32 of the Electric Coöperative Corporation Act provides as follows:

"All corporations organized under this act shall be exempt in any and all respects from the jurisdiction and control of the Pennsylvania Public Utility Commission of this commonwealth."

Section 38 of the same act prescribes that:

"This act is complete in itself and shall be controlling. The provisions of any other law of this commonwealth, except as provided in this act, shall not apply to a corporation organized under this act."

From the foregoing statutory provisions, it is plainly evident that the legislature intended to exempt coöperatives, such as are authorized by the Electric Coöperative Corporation Act, from the jurisdiction and control of the Public Utility Commission. The appellant concedes as much but argues that the exemption attaches only in respect of actually incorporated and organized coöperatives and that, until that status is reached, the Public Utility Law intrudes to require of the incorporators of a coöperative a certificate of public convenience. The appellant urges that the proposed coöperative is a public utility in that, when incorporated, it would possess attributes such as are possessed by public utilities, e.g., the power to condemn private property for corporate uses and the right to place its poles and wires upon streets and highways of municipalities or other political subdivisions of the state. The answer to the appellant's contention is twofold.

[1] In connection with the incorporation of a coöperative under the Electric Coöperative Corporation Act, §§ 32 and 38 of that act are alone sufficient to render inappropriate, and therefore unnecessary, the filing of a certificate of public convenience as in the case of a public utility. Granted, that the exemption from Commission jurisdiction and control provided by § 32 of the Electric Coöperative Corporation Act and the exclusive office of that act in regard to coöperatives, as declared by § 38, specifically refer to "corporations organized under [that] act," how, it may be asked, could a coöperative be incorporated otherwise than by following the steps prescribed by the Electric Coöperative Corporation Act for such an incorporation? Among the steps so prescribed, no requirement of a certificate of public convenience from the Public Utility Commission is anywhere to be found. The differentiation, which the appellant strives to make, between incorporators, associated solely to achieve the incorporation of a coöperative, and the incorporated coöperative itself is tenuous to say the least. If given effect, it would make the Public Utility Law applicable to a coöperative in the first step towards its incorporation but not thereafter. Neither the plain language nor the clear intent of the Electric Coöperative Corporation Act requires any such anomalous result. Nor may we produce it by construction: Driskel v. O'Connor (1940) 339 Pa 556, 563, 15 A2d 366; see Statutory Construction Act of May 28, 1937, P.L. 1019, § 52(1), 46 PS § 552(1).

[2] The further answer is that, no matter how similar a coöperative and a public utility may be in fact, a coöperative is *not* a public utility within the meaning of the Public Utility Law. Section 2(17)(g) of that statute expressly provides that "The term 'public utility' shall not include . . . (b) any bona fide coöperative association which furnishes service only to its stockholders or members on a nonprofit basis: . . ." Such is the very character of coöperative association whose incorporation is authorized and prescribed by the Electric Coöperative Corporation Act. The proposed Allegheny Electric Coöperative, Inc. will be empowered, as the act permits, to generate electric energy and to distribute and sell such energy to its stockholders or members on a nonprofit basis. Thus, it qualifies as a true coöperative and is therefore not a public utility as a matter of law: Cf. Philadelphia Association of Wholesale Opticians v. Public Utility Commission (1943) 152 Pa Super Ct 89, 97, 98, 48 PUR(NS) 164, 30 A2d 712. The Public Utility Law with its requirement of a certificate of public convenience, as a prerequisite to incorporation, has neither bearing nor influence upon the incorporation of a coöperative under the Electric Coöperative Corporation Act.

As the question here involved is simply one of interpreting a local statute whose words are plain and unambiguous, it is unnecessary for us now to review the interesting cases cited by both the appellant and the appellees from outside jurisdictions.

The decree is affirmed at the appellant's costs.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Consolidated Edison Expanding Gas Manufacturing Facilities

CONSOLIDATED EDISON COMPANY of New York, Inc., announced recently that it was expanding its gas manufacturing facilities by adding 36,000,000 cubic feet a day of capacity to its Hunts Point plant in the lower Bronx, in expectation of an unprecedented expansion of automatic gas heating.

The addition to the company's capacity will cost about $6,400,000 and will be the first major one since 1932. It is designed to meet an expected demand which company engineers estimate will bring about an 18 per cent increase in the daily send-out of gas. The addition will be ready for the heavy demands of the 1947-1948 winter months.

Four water gas sets will be added for manufacturing gas by carbonizing coke and enriching the gas with oil at the Bronx plant. Liquefied petroleum gas installations are also being added in the Bronx and at other system plants for meeting emergency demands.

The company reports that there are now more than 13,000 gas heating installations in its territory in New York city, and about 10,000 in Westchester county, a total of 23,000. Since January 1st of this year about 1,600 new installations have been made in New York city and 2,200 in Westchester. From 75 to 85 per cent of the new homes being built in the company's territory are being equipped with automatic gas heating equipment, it was said.

Sylvania Electric Appointment

W. C. LOUNSBURY, JR., formerly manager of the lighting department of the Lake Superior District Power Company, has joined the lighting division sales department of Sylvania Electric Products Inc., according to an announcement made by C. A. Burton, central division sales manager for Sylvania Electric. Mr. Lounsbury will have his offices at 135 South La Salle street, Chicago, Illinois.

Mr. Lounsbury is known in the lighting field for the origination and execution of a prize-winning lighting sales campaign in the National Utility Lighting Contest sponsored by the Edison Electric Institute of New York.

Heat Loss Control

THE INDUSTRIAL MINERAL WOOL INSTITUTE has issued a 20-page manual entitled "Control of Industrial Heat and Power Losses." Prepared especially for process engineers and power men, it gives nine case-histories of fuel cost savings resulting from proper insulation of piping, flanges, drum-heads, driers, boilers, and other hot surfaces.

Descriptions and pictures of the various forms of mineral wool and other useful information are included.

Copies of this informative brochure may be obtained without charge from the Industrial Mineral Wool Institute, 441 Lexington avenue, New York 17, New York.

Southern Natural Gas Plans to Increase Facilities

SOUTHERN NATURAL GAS COMPANY, Birmingham, Alabama, has applied for authority to construct additions to its gas transmission system operating in Alabama, Louisiana, Mississippi, and Georgia, and to construct branch lines to deliver gas at wholesale for distribution in Chattanooga, Tennessee, and in Lexington, Mississippi. Estimated cost of construction is $8,232,120.

The additional facilities proposed, which consist largely of loop lines and compressor units, would increase the delivery capacity of the company's system from 255,000 MCF per day to 305,000 MCF per day. This increase of 50,000 MCF daily would enable the company to deliver an additional 30,000 MCF per day in Georgia, 10,000 MCF per day in Chattanooga, 5,000 MCF per day in the Birmingham area, and 5,000 MCF per day to the Montgomery, Alabama-Columbus, Georgia, line.

S. A. Newman Heads Gulf Turbine Sales

S. A. NEWMAN, turbine lubrication specialist recently released from service as a Captain in the Navy, has been appointed chief turbine lubrication engineer by Gulf Oil Corporation. He will direct lubrication engineering activities in connection with all forms of turbines in the 30 states comprising Gulf's marketing area.

Rockwell Division Issues New Meter Bulletin

A NEW bulletin with detailed description of the Arctic Type Pittsburgh Disc Meter has been released by the Pittsburgh Equitable Meter Division of Rockwell Mfg. Company.

Full scale cut-away photographs of the meter, reproduced in natural colors with identifying captions keyed to the major parts, pre-

(*Continued on page 22*)

sent the construction features graphically. Subassembly features are described through isometric and sectional drawings with accompanying descriptive text. Technical data, dimensions, and list prices are tabulated.

Of particular interest to the operating man is a three-page section devoted to repair parts. Exploded views in which all operating parts are shown exactly as they are assembled in the meter case simplifies ordering of replacement units and serves as an assembly guide for the repair man.

Meters in sizes ½ in., ¾ in., and 1 in. are described. Copies of bulletin (W-804) may be obtained from district offices of the manufacturer.

G-E to Build Huge Turbine Factory at Schenectady

GENERAL ELECTRIC COMPANY will build a $20,000,000 plant in Schenectady for the manufacture of steam turbines and electric generators, President Charles E. Wilson announced recently.

All steam turbine facilities will be transferred to this building, which will be the largest in the G-E Schenectady works. About 3,000 persons will be employed.

Turbines projected will range from 20,000 to 200,000 kilowatt capacity. The most powerful of these could produce heat and light for a city of 600,000.

Plans to Install Additional Compressor Units

PANHANDLE EASTERN PIPE LINE COMPANY, Kansas City, Missouri, and Chicago, Illinois, has applied for authority to install eight additional compressor units aggregating 12,200 HP in eight of the compressor stations along the company's pipeline system which extends through Texas, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan. Estimated cost is $2,685,000.

American Optical Issues Body Safety Guide

A BODY safety guide which classifies hazards by industries and recommends the proper safety clothing and equipment for maximum protection has been published by American Optical Company, Southbridge, Massachusetts.

The guide classifies 21 hazardous types of work found in the 18 industries listed, includes also pictures and descriptions of different types of safety clothing which should be worn for protection against each hazard.

Folder on Floor Problems

"TOUGH Floor Problems?" is the title of a newly published folder dealing with the repair and construction of floors that are subject to acids, greases, oils, and severe abrasion. This booklet illustrates the method for preventing the disintegration of concrete where

(*Continued on page 24*)

PUBLIC UTILITIES:

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DODGE DIVISION OF CHRYSLER CORPORATION

these difficult conditions prevail. In addition the folder discusses the patching of spalled concrete, the pointing and resetting of brick or masonry, and the repair and construction of foundation and retaining walls.

For a free copy of this folder write to the Stonhard Company, 403 North Broad street, Philadelphia.

$250,571 Construction Program

WISCONSIN MICHIGAN POWER COMPANY has plans for a $250,571 construction program, much of which is already in progress. Major items in the program are new line and rural extensions, and a substation at Alpha. Installation of new circuit breakers at Crystal Falls, Chalk Hill, and White Rapids are also underway.

$105,252 Program Underway

SOUTHERN UTAH POWER COMPANY, Cedar City, Utah, has in progress a construction program which, it is estimated, will cost $105,252. Included in the project are steam plant additions and transmission and distribution equipment.

Construction Loans Announced

CONSTRUCTION loans—chiefly for distribution lines, system improvements or new or additional generating capacity—recently were made to the following enterprises by the Rural Electrification Administration:

Lake Region Electric Association, Inc., Webster, S. D., $350,000.

Upper Cumberland Electric Membership Corporation, Carthage, Tenn., $700,000.

Fort Loudoun Electric Coöperative, Madisonville, Tenn., $60,000.

Gate City Electric Coöperative, Inc., Childress, Tex., $83,000.

Tri-County Refrigeration Coöperative, Inc., Eddy, Tex., $8,000.

Valley Mills Refrigeration Coöperative, Inc., Valley Mills, Tex., $8,000.

Oakdale Electrical Association, Oakdale, Wis., $160,000.

Big Horn Rural Electric Company, Basin, Wyo., $237,000.

Verde Electric Coöperative, Inc., Cottonwood, Arizona, a new coöperative, $260,000.

United Rural Electric Coöperative, Inc., Kenton, Ohio, $85,000.

Cotton Electric Coöperative, Walters, Okla., $335,000.

Northeast Clackamas County Electric Coöperative, Inc., Sandy, Ore., $290,000.

Southeast Colorado Power Association, La Junta, Colo., $262,000.

Edgar Electric Coöperative Association, Paris, Ill., $42,000.

Huntington County Rural Electric Membership Corporation, Huntington, Ind., $80,000.

Licking Valley Rural Electric Coöperative Corporation, West Liberty, Ky., $655,000.

Jones County Electric Power Association, Laurel, Miss., $740,000.

Butler County Rural Public Power District, David City, Neb., $355,000.

Fairfield Electric Coöperative, Inc., Winnsboro, S. C., $230,000.

Lincoln-Union Electric Coöperative, Alcester, S. D., $215,000.

Douglas Electric Association, Armour, S. D., $575,000.

Coleman County Electric Coöperative, Inc., Coleman, Tex., $590,000.

Cherokee County Electric Coöperative, Inc., Rusk, Tex., $400,000.

Central Florida Electric Coöperative, Inc., Chiefland, Fla., $390,000.

West Florida Electric Coöperative Association, Inc., Graceville, Fla., $503,000.

Satilla Rural Electric Membership Corporation, Alma, Ga., $35,000.

Southern Illinois Electric Coöperative, Dongola, Ill., $20,000.

Fulton Rural Electric Membership Corporation, Rochester, Ind., $130,000.

Butler County Rural Electric Coöperative, Allison, Iowa, $300,000.

Salt River Rural Electric Coöperative Corporation, Bardstown, Ky., $450,000.

Williams Electric Coöperative, Inc., Williston, N. D., $300,000.

Tuscarawas-Coshocton Electric Coöperative, Inc., Coshocton, Ohio, $45,000.

Buckeye Rural Electric Coöperative, Inc., Gallipolis, Ohio, $21,000.

Alfalfa Electric Coöperative, Inc., Cherokee, Okla., $353,000.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction.

PROFESSIONAL DIRECTORY *(continued)*

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PROFESSIONAL DIRECTORY *(continued)*

PROFESSIONAL DIRECTORY (*concluded*)

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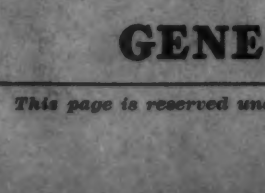
Resistance Welding Program. A 30-min., 16-mm, full color sound motion picture, "This Is Resistance Welding," takes you inside 15 industrial plants, and shows how resistance welding is reducing costs and increasing production.

Electronic Induction Heating Program. A 35-mm talking slidefilm, "Electronics Broadens the Use of Induction Heating," explains the fundamentals of electronic induction heating and its advantages in brazing, soldering, annealing and hardening, and shows induction heaters in action.

Laundry Electrification Program. A 35-mm, talking slidefilm, "On One Condition," presents a story of a typical laundry owner who climbed on to the profit side of the ledger by making his plant electrically fit. The American Institute of Laundering, and leading laundry-machinery manufacturers, aided in the film's production.

Sewage Treatment Program. A 25-min., 16-mm, full color sound motion picture, "Clean Waters," portrays to the general public the dangers from pollution of surface waters and shows how modern sewage treatment solves the problem with the proper application of electrical equipment. Produced with the co-operation of U. S. Public Health Service.

Industrial Electronics Training Course. This course is designed to give a thorough understanding of electronics to engineering and production personnel. The course consists of: 12 talking slidefilms; 25 copies each of 12 review booklets, keyed to the 12 slidefilms; a manual to help you present the lectures in the best way.



To encourage widespread use these five programs, booklets, and manuals are made available to you at the cost of producing additional copies.

A sales manual explaining how to best use the film, and a booklet for distribution to power users after showing the film are included in each of the above programs. *Apparatus Dept., General Electric Company, Schenectady 5, N. Y.*

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